SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959

No. 38

GEORGE LEE PARKER, PETITIONER

vs.

O. B. ELLIS, GENERAL MANAGER, TEXAS PRISON SYSTEM

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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1 In the United States District Court, Southern District of Texas, Houston, Texas

C. A. 9783

EX PARTE GEORGE L. PARKER, PETITIONER

v.

O. B. ELLIS, GEN. MGR., TEXAS STATE PRISON SYSTEM, RESPONDENT, ET AL.

[File endorsement omitted.]

"Application for the writ of habeas corpus"

Filed May 31, 1956

To the Honorable Thomas M. Kennerly, U.S. District Judge:

STATE OF TEXAS, *County of Walker:*

May it please the Court;

Comes now, George Lee Parker, petitioner in the foregoing application for the writ of habeas corpus, and for that purpose, would show to this honorable court that he is illegally restrained, in his liberty, by the respondent, O. B. Ellis, Gen. Mgr.; Texas Prison System, or his authorized agents, by virtue of certain commitments, issued out of the 69th District Court of Moore County, Texas, or by other process, to petitioner unknown. Such commitments are illegal, null, and void, and of no effect, since it issues from a judgement had in Moore County Texas, in direct violation of constitutional rights, both Federal and State, in denial of equal protection and due process of law.

Article #6. U. S. Constitution.

Article #1. SEC. 10. State of Texas, as will be cited in the foregoing to wit:

First: Petitioner will show that he was forced to trial in the 69th District Court on November 3, 1954, without counsel and was convicted, in case #503, on a plea of not guilty to a charge of check forgery and sentenced to seven years in prison.

2 That he requested legal counsel, but was denied, and told by the Court that "if you (Parker) want to plead guilty and file a request for a suspended sentence, the Court will appoint you an attorney to represent you," but, otherwise it was not the practice of the Court to appoint legal counsel."

(See Statement of Facts.)

Second: Petitioner would show that he was 67 years of age, and had been confined to bed with organic heart disease almost constantly since March 1953, and had been treated at Moore County jail, from one to four times per week, by Doctor O. J. Richardson of Dumas, Texas. From August 27th to November 3rd 1954. And at trial was suffering from extreme "dizzy spells" and in no way, in position to obtain justice. That his plea was ignored and he was brought to trial.

Third: Petitioner will show that the entire jury was picked by the County Attorney, Mr. McDonald. Your petitioner was convicted on the conjuctuous testimony of Sheriff Easley and other witnesses called by the State along with the malicious blistering, bantering and even bartering of the County Attorney, McDonald, to the jury.

Fourth: Petitioner would, respectively, show, to Your Honor, the reviewing Court, that Sheriff Easley testified as follows:

By McDONALD:

Q. Did Mr. Parker ever deny writing that check?

A. No.

Q. In fact he told you he did write it didn't he?

A. I believe he did say he wrote it.

Fifth: Mr. Cecil Bear, banker at Dumas, Texas, was called, as the next witness for the State, as an expert on hand writing, and testified as follows:

Q. Mr. Bear, how long have you had dealings with hand writings?

A. Twenty-four (24) years.

3 Q. Would you say this check (exhibit) was written by Geo. L. Parker?

A. I could not say it was.

Q. Mr. Bear would you say that handwriting resembles Mr. Parker's handwriting?

A. No I could not say that it does.

Sixth: Your petitioner would further show that Elzie Quattlebaum, the complaining witness, is a brother-in-law to the petitioner and a bitter enemy for 20 years. He was the first witness to take the stand and testified as follows: The prosecutor questioning the witness:

Q. Do you know Geo. L. Parker?

A. I know of him.

Q. In fact you know that this is him sitting here by me don't you?

A. I guess it is.

Q. Did you ever see this check before [passing the check in question to Quattlebaum]?

A. Yes.

Q. Did you write that check?

A. No.

Q. Did Geo. L. Parker forge that check? Is that his handwriting?

A. I guess it is, it *shore ain't* mine.

(See statement of facts.)

Seventh: At this juncture the State rested. And since your petitioner was without legal representation, and unable, physically, to fully comprehend matters himself, the county atty. began summing up.

4 W.H.C. Sec. Seventh, Continued

STATE OF TEXAS,
County of Walker, ss:

George Lee Parker, petitioner.

Sworn to and subscribed before me, a notary public, in and for the county of Walker, State of Texas, on this the 12th day of May A.D., 1956.

[SEAL] WILFORD BURDEAUX,
Notary Public.

My com. expires on the 1st day of June 1957.

5 *Exhibit 1 to application*

GEORGE LEE PARKER, No. 27,501

v.

THE STATE OF TEXAS, APPELLEE

APPEAL FROM MOORE COUNTY

DEAR JUDGE DAVADISON: I'm writing you in regard to the Statement of Facts that was filed in your Court by Lovell & Lyle, Attys., Dumas, Texas.

I'm going to take my case to the U.S. Court on a writ. I will need the Statement of Facts that is in your Court is there anyway I may get it? Please let me hear from you.

Thanks.

GEORGE LEE PARKER #133352,
Box 32, Huntsville, Texas.

AUSTIN, TEXAS [illegible] *1955.*

DEAR SIR: I have been instructed by the [illegible] advise you that the statement of facts in your case [illegible] be sent to you. After a document has been filed, it must be kept here with all the papers in the case.

Yours truly,

Glenn Haynes.
GLENN HAYNES, *Clerk.*

6 *Exhibit 2 to application*

James R. Lovell
Hugh T. Lyle

Offices in Hotel Sneed
Phones 2-3631 or 2-3481

LOVELL & LYLE

ATTORNEYS AND COUNSELLORS AT LAW

P.O. Box 218, DUMAS, TEXAS, *June 16, 1955.*

Mr. GEORGE L. PARKER,
No. 133352,
Box 32, Huntsville, Texas.

DEAR GEORGE: Thank you for your letter of May 14, 1955.

As of this date Mr. Worst of Sunray or no one else has ever been in to see about picking up your statement of facts. I will be happy to take the matter up with them as soon as anyone will come in, but I suggest at this point you again write them another letter and ask them to come by and see me about picking it up if they wish.

Very truly yours,

LOVELL & LYLE,
By: James R. Lovell,
JAMES R. LOVELL.

JRL/jc.

7 *Exhibit 3 to application*

COUNTY OF MOORE

STATE OF TEXAS

C.A. 9783

Hazel Haile, District Clerk

DUMAS, TEXAS, *June 10, 1955.*

Mr. GEORGE LEE PARKER,
Route 1, Box 1,
Huntsville, Texas.

DEAR MR. PARKER: You will find enclosed herewith the certified copies of Indictment, Judgment and Sentence in Cause No. 503. You ask for a copy of the Statement of Facts, but I do not have such a copy. I suppose you will have to ask Joe Nesbitt the Court Reporter for that or I will be glad to show him your request the next time he is here.

With best personal wishes, I remain

Yours very truly,

HAZEL HAILE,
District Clerk,
Moore County, Texas

hh.

8 *Attachments to Exhibit 3*

In the Name and by the Authority of the State of Texas:

The Grand Jurors, for the County of Moore State aforesaid, duly selected, organized, sworn and empaneled as such at the March Term, A.D. 1954, of the District Court for said County, upon their oaths in said Court present that George Lee Parker on or about the 16 day of April A.D. one thousand nine hundred and fifty-four and anterior to the presentement of this Indictment, in the County of Moore and State of Texas, did then and there unlawfully and without lawful authority and with intent to injure and defraud, willfully and fraudulently make a false instrument in writing purporting to be the act of another, to wit, the act of Elzie Quattlebaum, which said false instrument is to the tenor following:

"Cheyenne, Okla. 4-16 1954 No. 3
Security State Bank 88-1034
Cheyenne, Okla. 1113
Pay to the order of G. L. Parker $38.00
Thirty eight no—100 Dollars
11 Phoebia Quattlebaum x
B Elzy Quattlebaum
Member Federal Reserve System
Member Federal Deposit Insurance Corporation"
against the peace and dignity of the State.

(S) EDWARD L. STALLWITZ,
Foreman of the Grand Jury.

THE STATE OF TEXAS,
Coun · of Moore.

I, Haz · Haile, Clerk of the District Court of Moore County, Texas, do hereby certify that the foregoing is a true and correct copy of the original Bill of Indictment, filed in said Court on the 26th day of July, A.D. 1954.

Given under my hand and seal of said Court at office in Dumas, Texas, this the 10th day of June, A.D. 1955.

HAZEL HAILE,
Clerk of the District Court,
Moore County, Texas.

9 In the District Court of Moore County, Texas

No. 503

Date Sept. Term Nov. 3, 1954

THE STATE OF TEXAS
v.
GEORGE LEE PARKER

CHARGE: FORGERY

Judgment

Filed November 12, 1954

This Day this cause was called for trial, and the State appeared by her District Attorney, and the Defendant George Lee Parker appeared in person in open Court, his counsel also being present, whereupon both parties announced ready for

trial and the said Defendant George Lee Parker in open Court, pleaded not guilty to the charge contained in the indictment herein; thereupon a jury of good and lawful men to-wit: B. C. Campsey and eleven others was duly selected, impaneled and sworn, who, having heard the indictment read, and the Defendant's plea of not guilty thereto, and having heard the evidence submitted, and having been duly charged by the Court, retired in charge of the proper officer to consider of their verdict, and afterwards was brought into open Court by the proper officer, the Defendant and his counsel being present, and in due form of law returned into open Court the following verdict, which was received by the Court, and is here now entered upon the minutes of the Court, to-wit:

"No. 503

In the District Court, Moore County, Texas, 69th Judicial District

STATE OF TEXAS

v.

GEORGE LEE PARKER

Verdict of the jury

We, the Jury, find the defendant, George Lee Parker, guilty of forgery, as charged in the indictment, and we assess his punishment at confinement in the penitentiary for (Seven) 7 years.

(S) B. C. CAMPSEY,
Foreman of the Jury."

It is therefore considered and adjudged by the Court that the Defendant George Lee Parker is guilty of the offense of forgery as found by the jury and that he be punished by confinement in the State Penitentiary for a term of seven years, and that the State of Texas do have and recover of the said Defendant George Lee Parker all costs in this prosecution expended, for which let execution issue; and that the said Defendant be remanded to jail to await the further orders of the Court herein.

(S) HARRY H. SCHULTZ,
District Judge,
Moore County, Texas.

10 THE STATE OF TEXAS,
County of Moore:

I, Hazel Haile, Clerk of the District Court in and for Moore County, Texas, do hereby certify that the above and foregoing is a true copy of the original judgment in the said Cause No. 503, The State of Texas vs. George Lee Parker, as appears of record in the minutes of said Court in Vol. 6, at Page 367.

Witness my hand and the seal of said Court, at office in Dumas, Texas, this 10th day of June, A.D., 1955.

[SEAL]

HAZEL HAILE,
District Clerk,
Moore County, Texas.

11 In the District Court of Moore County, Texas

No. 503

Sept. Term 1954, Nov. 3, 1954

THE STATE OF TEXAS

v.

GEORGE LEE PARKER

Sentence

Filed November 12, 1954

This day this cause being again called, the State appeared by her District Attorney, and the defendant George Lee Parker was brought into open Court in person, in charge of the Sheriff, for the purpose of having the sentence of the law pronounced in accordance with the verdict and judgment herein rendered and entered against him on a former day of this term. And thereupon the defendant George Lee Parker was asked by the Court whether he had anything to say why said sentence should not be pronounced against him and he answered nothing in bar thereof. Whereupon the Court proceeded, in the presence of the said defendant George Lee Parker to pronounce sentence against him as follows: It is the order of the Court that the defendant George Lee Parker who has been adjudged to be guiity of forgery be delivered by the Sheriff of Moore County, Texas, immediately to the Manager of the Prison System of the State of Texas, or other

person legally authorized to receive such convicts, and the said George Lee Parker shall be confined in said penitentiary for a term of not less than 2 years nor more than 7 years in accordance with the provisions of the law governing the penitentiaries of the Prison System of the State. And the said George Lee Parker is hereby remanded to jail until said Sheriff can obey the directions of this sentence.

(s) HARRY H. SCHULTZ,
Judge, Judicial District.

THE STATE OF TEXAS,
County of Moore:

I, Hazel Haile, Clerk of the District Court in and for said County, hereby certify that the above is a true and correct copy of the sentence in the above entitled cause, as appears of record in the Criminal Minutes of said Court in Vol. 6, Page 368.

Witness my hand and seal of office at Dumas, Texas, this 10th day of June 1955.

HAZEL HAILE,
Clerk District Court,
Moore County, Texas.
By ——— ———,
Deputy.

12 In District Court, Moore County, Texas

No. 503

COPY OF SENTENCE

THE STATE OF TEXAS

v.

GEORGE LEE PARKER

Crime: forgery. Term: 7 years. Date sentenced: 11/3, 1954. Plea: Not Guilty.

13 *Exhibit 4 to application*

No. 184

EX PARTE GEORGE L. PARKER

ORIGINAL APPLICATION

Order

Petitioner contends that the judgment by virtue of which he is confined is void for several reasons. We shall discuss them serially:

1. That he was not represented by counsel at the time of his trial. Petitioner does not allege sufficient facts which would require that counsel should have been appointed for him.

2. That the facts are not sufficient to support the conviction for the offense named in the indictment. This is a question that was disposed of adversely to his contention in the appeal of his conviction to this Court.

3. That he was ill at the time of his trial. This is a question that should have been raised by a motion for continuance in the trial court. The transcript on file in this Court reflects that none was filed.

Application for permission to file writ of habeas corpus is denied.

MORRISON,
Presiding Judge.

(September 21, 1955.)

14 *Exhibit 5*

J. D. Smith, M.D. Walter E. Blevins, M.D.

DRS. SMITH & BLEVINS

619 Main

HUGOTON, KANSAS

Phone 4-4361

JUNE 17, 1953.

RE: MR. GEORGE PARKER

DEAR DOCTOR: The above patient was first seen at this office on 5-6-53 with complaints of exertional dyspnea, precordial

oppression, general weakness, and malaise; all progressive over a 4 to 6 week period.

Physical examination revealed medium moist, inspiratory and expiratory, wheezing rales bilaterally. The cardiac R & R was normal without murmurs. The eye grounds did not appear remarkable. The abdomen was essentially normal as were the extremities. Vital Capacity=91%; P=76; B.P.= 130/80 LAS. The ECG revealed a coronary insufficiency constant with the clinical symptoms of organic Heart disease. The UA was essentially negative throughout. The Hemogram was as follows: RBC—5.6M; WBC—10,700 with a normal differential, and Hgb—15.8 gms.

This patient was subsequently treated for early congestive failure as follows:

1—Thiomerin—1 cc I.M., PRN.

2—Purodigin—0.2 mg. q 4 hr until 1.2 mgm; then 0.1 mg daily.

3—KI gtts V q.i.d., P.C. & h.s. with gradual increase to gtts XXV q.i.d.

He was seen here again on 5-9; 5-12; 5-16; and 6-15-53 with progressive improvement objectively and subjectively except for some residual exertional dyspnea at present time.

Very truly yours,

J. D. Smith, M.D.
J. D. SMITH, M.D.

JDS/js.

15 A. L. Hilbig, M.D. W. M. Campion, M.D.
O. F. Prochazka, M.D. N. D. Harris, M.D.
D. G. Holcomb, M.D. R. F. Byrne, M.D.

MEDICAL ARTS CLINIC

523 NORTH WASHINGTON

Phone 3811

LIBERAL, KANSAS, *6 July 1953.*

To Whom It May Concern:

This is to certify that I have thoroughly examined Mr. George Parker of Sunray, Texas and find that his physical condition is such that he is, and will be, unable to participate in any work or activity requiring more than the slightest exer-

tion. At present he is receiving treatment and must continue to do so for an indefinite period.

W. E. Blevins, M.D.
W. E. Blevins, M.D.

WEB/md.

16 J. D. Smith, M.D. Walter E. Blevins, M.D

DRS. SMITH & BLEVINS

619 Main

HUGOTON, KANSAS

Phone 4-4361

JULY 14, 1953.

RE: MR. GEORGE PARKER, SUNRAY, TEXAS

To Whom It May Concern:

The above patient, for the past four months, has been treated for Pulmonary Emphysema, and Arteriosclerotic Heart Disease with an associated cardiac insufficiency and decompensation, of functional capacity, Class 2; i.e. fatigue, palpitation, shortness of breath, pedal edema, and sub-sternal oppression, ensues with but mild physical activity, though the above symptomatology is generally minimal at rest.

He has been duly advised to refrain from all but absolutely necessary activity.

He is at the present time taking: (1) Purodigin 0.1 mg. daily, (2) Diuretic injections as necessary, and (3) Potassium Iodide Tincture, 30 drops four times daily.

Very truly yours,

J. D. Smith, M.D.
J. D. SMITH, M.D.

17 A. L. Hilbig, M.D. N. D. Harris, M.D.
O. F. Prochazka, M.D. R. F. Byrne, M.D.
D. G. Holcomb, M.D. W. E. Blevins, M.D.

MEDICAL ARTS CLINIC

523 NORTH WASHINGTON

Phone 3811

LIBERAL, KANSAS, *27 August 1954.*

To Whom It May Concern:

This is to certify that George Parker has been under my care for more than a year and that his conditions warrants complete disability.

W. E. BLEVINS, M.D.
W. E. Blevins, M.D.

WEB md.

18 *Ex Parte Brief*

In the United States District Court, Southern District of Texas, Houston, Texas

C.A. 9783

RE: WRIT OF HABEAS CORPUS, GEO. L. PARKER, PLF.

v.

O. B. ELLIS, GEN. MGR., T.S.P.S., DEFENDANT, ET AL.

[File endorsement omitted.]

STATE OF TEXAS,
Walker County:

Comes, now, one Geo. L. Parker, plaintiff in the above titled cause, and would present to his Honor, Thomas M. Kennedy, U.S. District Judge that on the 3rd day of November, A.D. 1954. He was brought into court in the county of Moore, State of Texas, for trial, on the charge of check forgery. And that, because of the physical condition of the plaintiff, herein, he requested a continuance of the case, which was promptly denied by the Trial Court.

The plaintiff, herein, then asked the trial judge to appoint an attorney to defend him, as he, Parker, was without funds to

employ a lawyer. This, too, was refused by the Court, unless a plea of guilty was entered by Parker, and upon application for probation.

This procedure was inconsistent with the facts involved in the cause, hence declined by the plaintiff, herein, and forthwith the mock trial began, for it was, indeed, a travesty on justice.

19 The jury, in the instant cause, was selected, entirely, by the county attorney, of Moore County, Mr. McDonald, and the testimony began with the complainant being called, one Elzie Quattlebaum, whom had personally known the plaintiff, herein, for more than 45 years, his sister has been the wife of Geo. L. Parker since the year 1909, and for more than 20 years we were close friends. But about 20 years prior to the instant case he, Elzie Quattlebaum, has been the bitterest and most unscrupulous enemy Geo. L. Parker ever had. But even in his enmity, he could not say with certainty, that the signature, upon the exhibited check, was that of Geo. L. Parker.

Note the animosity of Quattlebaum when he only knew of Parker, and when pressed, by McDonald for positive identification he said: Only, "I guess it is." See section 6th, Quattlebaum's testimony, note further his uncertainty about the signature. "I guess it is, it shore ain't mine."

Now, the testimony of Mr. Bear, the banker, who was called as a handwriting expert; certainly his 24 years experience in such matters properly qualifies him, as such an expert. He could not say the handwriting on the exhibited check, even resembled that of Geo. L. Parker, see Bear testimony, section fifth, page 3.

Little need be said about the hear-say testimony of Sheriff Easley who, in answer to the leading question: "As a matter of fact he told you he did write the check, didn't he?" Ans. "I believe he did say he wrote it."

20 It was this same sheriff who rushed to the stand with a list of purported convictions against Geo. L. Parker, but when reminded by the plaintiff that he was under oath, he admitted he was confused, didn't really know whether or not there were any previous convictions. See statement of facts But the jury was impressed by the sheriff's early statements about the possibility of such convictions. Certainly under the rules of evidence, such testimony was not admissable.

unless or until the defendant, in a criminal case, is placed on the witness stand. And here, again, the plaintiff, herein, was denied his constitutional rights.

May it please the Court, the plaintiff, herein, respectfully, submits, that trial court proceedings, in the instant cause, was highly improper, unlawful and exceedingly damaging to the interests of Geo. L. Parker.

Note the exhortations of the county attorney, as he paraded before the jury, with such statements as: "Gentlemen of the Jury, I have other cases against this defendant, but if you will convict him on this charge and assess his penalty at seven years, I will drop the other charges." This was a bareface falsehood. But fits in admirably, with his statement, under the oath of his office that Geo. L. Parker, was present in court with his attorney, when the jury returned with its verdict, and again the same statement was made when Geo. L. Parker appeared before the trial court for sentence. It is a fact, indeed that at no time of the trial, return of the verdict or appearance to sentence was he represented by an attorney. It would seem that there is a reasonable cause for the charge of perjury against the person or persons responsible for the falsefied records.

21

The plaintiff, herein, respectfully states that after his trial and conviction, that his friends paid for three (3) copies of the statement of facts, distributed as follows: One copy was left at the court clerk's office, Dumas, Texas, one copy sent to court of criminal appeals and one copy is in the office of James Lovell an atty. at Dumas, Texas. Geo. L. Parker has made repeated efforts to obtain one of these copies, to no avail.

The plaintiff, herein, states he is destitute of funds to employ counsel or otherwise finance the court proceedings sought in Your Honor's court, wherefore begs that an attorney be appointed, by the court to prosecute the case for him. To right, in part, a grave wrong which has been perpetrated, against him, both in the trial court, and the habeas corpus relief sought in State court.

22

The plaintiff, herein, would, respectfully, show that the county attorney at Dumas, Texas, has continued his animus efforts against Geo. L. Parker ever since his delivery to the State penitentiary, through which the said Parker has been blocked, thus far, in his attempts to obtain justice in the State courts.

Therefore, because, of the injury received, at the hands of those in authority, in the State Courts, and various and divers denial of his rights, as an American citizen, Geo. L. Parker prays that His Honor Judge Thomas M. Kennedy, will grant unto him such relief, as in the courts opinion, may seem mete and proper, based upon the facts in the proceedings, as he finds them to be, to Geo. L. Parker, and the said Parker will ever pray.

George Lee Parker,
GEO. L. PARKER,
Plaintiff.

[*Duly sworn to by George Lee Parker; jurat omitted in printing.*]

23 In the United States District Court, Southern District of Texas, Houston Division

Civil Action No. 9783

IN THE MATTER OF PETITION OF GEORGE LEE PARKER FOR THE WRIT OF HABEAS CORPUS

[File endorsement omitted.]

Memorandum and order:

May 31, 1956

On this day came on to be heard the petition of George Lee Parker, hereinafter called Petitioner, an inmate of the Texas State Penitentiary, in this District and Division, for the Writ of Habeas Corpus under Section 2241, et seq., Title 28, United States Code of Judiciary and Judicial Procedure. Also his petition to be allowed to proceed under Section 1915, Title 28, of such Code, without paying or giving security for the costs of court.

In a similar case (Baker v. Ellis, 194 F. (2d) 865) the Court of Appeals for the Fifth Circuit has said (italics mine):

"In some way, by the issuance of a show cause order *or otherwise*, the petitioner should have the opportunity of developing a record upon which his rights might be intelligently and certainly determined and reviewed."

This same ruling has since been made in other similar cases. Therefore, with respect to Petitioner's Petition,

It is Ordered as Follows:

First: That the Petitioner may proceed under Section 1915, Title 28, U.S.C.A., but in this court only, and that the Clerk of the Court is directed to file his Petition. However, the Clerk may, with the approval of the court, require Petitioner to furnish the necessary duplicate copies of his petition required under Local District Rule 13.

Second: That O. B. Ellis, General Manager of the Texas Prison System, be and he is hereby required to file his
24 Answer to such Petition within thirty (30) days from the date hereof, and in order that he may do so, the Clerk of the Court will send, by United States Mail, to the Attorney General of Texas a copy of such Petition and of this Order, requesting a receipt therefor. This shall be deemed sufficient service to require the filing of such Answer within such time, unless the Attorney General shall require the issuance and service of process under Rules 4 and 5 of the Federal Rules of Civil Procedure, or other service, and so notifies the Clerk. At the time of filing his Answer, said Ellis shall serve Petitioner with a copy thereof, in accordance with Rule 5(b) of the Federal Rules of Civil Procedure, and shall file with the Clerk his certificate showing such service.

Within twenty (20) days after the service of such Answer on Petitioner, Petitioner shall file with the Clerk his reply to such Answer, if any he desires to make.

Third: The Answer of said Ellis as General Manager of the Texas Prison System, shall set forth in detail why and by what authority Petitioner is held, and if held under the judgment, sentence or order of any court or courts, the name of such court or courts, and the number and style of the case or cases in which same were entered It is intended that said Ellis shall make a *full and complete disclosure and statement* of why and by what authority Petitioner is held. Such Answer shall also be accompanied by a copy of the indictment or indictments against Petitioner and copy of such judgment or judgments, sentence or sentences, order or orders. Also, if available a copy of any statement of facts filed in the trial court or courts, and a certificate of the trial judge or judges under Section 2245, Title 28, U.S.C.A. If there was an appeal of the case or cases, such Answer shall also be accompanied by copy of the judgment or judgments on appeal, the statement of facts on appeal,

if available, and copy of the opinion or opinions of the
25 appellate courts, or a reference to where it or they may be found in the Southwestern Reporter System or elsewhere. If Petitioner has applied to a Texas State Court or Courts for the Writ of Habeas Corpus, it shall be so stated in such answer, and copies of such habeas corpus proceedings shall also be filed.

Fourth: When these pleadings clearly presenting the issues have been filed with the Clerk of the Court, the Court will then determine and direct the further procedure, if any.

The Clerk will record this Memorandum and Order on the Minutes of the Court, and will furnish the Attorney General of Texas and Petitioner each with a copy hereof.

Done at Houston, Texas, this May 31, 1956.

T. M. KENNERLY,
United States District Judge.

27 In United States District Court

HOUSTON, TEXAS, *June 7, 1956.*

Re: C.A. 9783

IN THE MATTER OF PETITION OF GEORGE LEE PARKER FOR THE WRIT OF HABEAS CORPUS

Mr. GEORGE LEE PARKER,
Box 32, Huntsville, Texas.

DEAR SIR: We have your letter dated June 4, 1956, inquiring about your application for the Writ of Habeas Corpus.

We mailed you on June 1, 1956, a copy of Memorandum and Order of this court, advising you that your Petition had been filed. We are sure that you have received our letter by now.

Yours very truly,

V. BAILEY THOMAS,
Clerk.
By ALBERT E. ANDERSON,
Deputy.

28 In United States District Court
RE: PETITION FOR H. C. WRIT.

TEXAS PRISON SYSTEM

Inmate's No.: 133352.
Name: Geo. L. Parker.
Unit: Walls, P.O. Box 32.
Date: June 9, 1956.
To: Mr. Albert Anderson.
Relation: Business.
RFD, Street or Box No.: Clerk U.S. Dist. Ct.
City: Houston.
State: Texas.

To the Person Receiving This Letter:

All inmates mail is opened, censored and recorded by officials. Inmates may receive not more than three letters a week from any person on their correspondence and visiting lists. These letters must be limited to two pages. You may use one sheet and write on the front and back if your wish. Please address the inmate by name and number. If these rules are not observed the letter will be returned to the sender.

Except at Huntsville inmates are permitted to visit from 9:00–11:00 or from 1:00–3:00 on Sunday. At Huntsville visiting hours are from 1:00–3:00 on Saturday afternooon, 7:30–9:30, 9:30–11:30, and 1:00–3:00 on Sunday. Men in Segregation are permitted to visit on any day of the week other than Saturday or Sunday upon written permission of the Warden of the Segregation Unit. Because of limited facilities inmates may have a visit every two weeks and not more than two adults may visit at one time.

Any money deposited to the account of an inmate must be sent in the form of a money order or cashier's check to Mr. L. W. Wright, Cashier, Box 32, Huntsville, Texas. Please give the name and number of the inmate to whom the money is to be deposited.

DEAR SIR: Acknowledging receipt of your Communication of 7. Inst. I wish to express my heartfelt appreciation for your kindness in answering my letter of inquiry about the fate of my application for the H. C. Writ. and my thanks for your tolerance of my emotional desire to hasten matters as much as Possible. to right one of the most outrageou Miscarriages of Justice ever Perpetrated in Texas Courts.

The memorandum of Stated Court order, reached me a couple of days ago, and, again, I say thanks for everything as i am Certain, now, that Justice, in the Court of His Honor Judge Kennerly Will obtain.

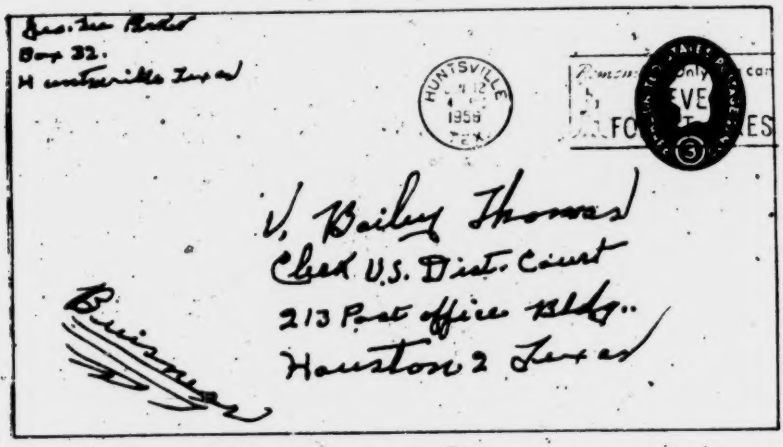
Sincerely, grateffully yours,

GEORGE LEE PARKER.

File TMK 6/13/56.

[File endorsement omitted.]

29



30 [File endorsement omitted.]

31 In the United States District Court for the Southern District of Texas, Houston Division

[Title omitted.]

Answer of O. B. Ellis, Respondent

Filed August 1, 1956

To the Honorable Court:

In obedience to the order heretofore entered by this Honorable Court, Respondent O. B. Ellis presents his answer to the Petition of George Lee Parker for the Writ of Habeas Corpus.

I

Respondent would show that, as General Manager of the Texas Prison System, he holds custody of Petitioner by virtue of a certain valid judgment entered in the District Court of

the 69th Judicial District, Moore County, Texas on November 3, 1954 in Cause No. 503, being styled The State of Texas 1. George Lee Parker, and a certain valid sentence pronounced on said George Lee Parker in said cause on November 3, 1954. True copies of the indictment, capias, charge of the Court, verdict, judgment, sentence, mandate and docket entries in Cause No. 503 in the District Court of the 69th Judicial District, Moore County, Texas, are annexed to this Answer under Appendix A.

II

In further obedience to the order of this Honorable Court, Respondent has obtained and attaches to his Answer, under Appendix B, a certificate from the Honorable Harry Schultz, Judge of the 69th District Court, Moore County, Texas, who was the trial judge in Cause No. 503, styled The
32 State of Texas v. George Lee Parker.

In addition thereto, Respondent has obtained and attaches under Appendix B copies of the prison and criminal record of Petitioner, showing that at present he is held only under authority of the Moore County sentence.

Included in Appendix C are copies of Petitioner's Application for Writ of Habeas Corpus, and his application for rehearing to the Texas Court of Criminal Appeals, and the order of that court denying the application. Also included is the order of the Supreme Court of the United States denying Petitioner's application for Writ of Certiorari.

III

Respondent would further show this Honorable Court that on or about August 29th, 1955, Petitioner filed in the Court of Criminal Appeals of the State of Texas a Petition for the Writ of Habeas Corpus, setting forth substantially the same grounds as are now presented to this Honorable Court. On the 21st day of September, 1955, such Petition for the Writ of Habeas Corpus was denied by the Court, as shown in Appendix C.

IV

Respondent avers that George Lee Parker was regularly indicted by a proper grand jury in the State Court; that he

was found guilty of such charges in said Court; that he was afforded all aspects of due process of law.

Wherefore, Respondent respectfully prays judgment of the court that Petitioner's application be dismissed or, in the alternative, that it be in all things denied.

Respectfully submitted.

JOHN BEN SHEPPERD,
Attorney General of Texas,
John A. Wild.
JOHN A. WILD,
Assistant,
Attorneys for Respondent,
Capital Station, Austin, Texas.

33 [*Duly sworn to by John A. Wild; jurat omitted in printing.*

[Certificate of service (omitted in printing).]

35 *Appendix A to Answer*

Indictment omitted. Printed side page 5, supra.

36 Capias & Sheriff's Return

THE STATE OF TEXAS:

To Any Sheriff of the State of Texas—Greeting:

You are hereby commanded to arrest George Lee Parker and him safely keep, so that you have him before the Honorable District Court of Moore County, Texas, at the Court House of said County, in Dumas, Texas, Instanter, then and there to answer the State of Texas upon an indictment pending in said Court, charging him with Forgery.

Herein Fail Not, but make due return hereof to this Court Instanter.

Witness my hand and seal of office, at Dumas, Texas, this 26th day of July, A.D. 1954.

HAZEL HAILE,
Clerk, District Court,
Moore County.

Sheriff's return

Came to hand the 27th day of July, A.D. 1954, at 10 o'clock A.M., and executed on the 27th day of July A.D., 1954, at 10

o'clock M, by arresting the within named George Lee Parker at Sunray in Moore County, Texas, and placing him in the County jail of Moore County, Texas.

I actually and necessarily traveled no miles in the service of this Writ, in addition to any other mileage I may have traveled in the service of other process in this cause during the same trip.

Fees: Making Arrest	$2.00
Commitment	2.00
Total	4.00

JOHN M. EASLEY,
Sheriff,
Moore County, Texas.
By ARTHUR ULLOM,
Deputy.

37 In the District Court, Moore County, Texas, 69th Judicial District

No. 503

THE STATE OF TEXAS

v.

GEORGE LEE PARKER

CHARGE OF THE COURT

Charge of the Court

Filed November 3, 1954

Gentlemen of the Jury:

The indictment in this case charges the defendant, George Lee Parker, with the offense of forgery, alleged to have occurred in Moore County, Texas, on or about the 16th day of April, 1954, and to said charge the defendant pleads "not guilty".

1

You are the exclusive judges of the facts proved, of the credibility of the witnesses, and of the weight to be given to their testimony, but you are not the judges of the law, as you will receive the law from the court, which is herein given you, and be governed thereby.

2

In all criminal cases the burden of proof is on the State. The defendant is presumed to be innocent until his guilt is established by legal evidence, beyond a reasonable doubt, and in case you have a reasonable doubt as to the defendant's guilt, you will acquit him, and say by your verdict "not guilty."

3

Our statute provides that he is guilty of forgery who without lawful authority, and with intent to injury and defraud, shall make a false instrument in writing purporting to be the act of another, in such manner that the false instrument so made would (if the same were true) have created, increased, diminished, discharged or defeated any pecuniary obligation, or would have transferred, or in any manner have affected any property whatever.

38

4

You are instructed that the making of an instrument to constitute forgery must be done with intent to injure or defraud, and the injury must be such as affects one pecuniarily, or in relation to his property. But it is not requisite, in order to constitute this offense, that the accused, in committing it, if he did, intended to injure or defraud any particular person, or that any particular person was injured or defrauded by the forgery; it is sufficient if it appears that possibly some one might be injured or defrauded thereby; but the jury must believe from the evidence, beyond a reasonable doubt, that the intent of the accused was to injure or defraud some person in the manner stated in the indictment.

5

The term "pecuniary obligation" means every instrument having money for its object, and every obligation for the breach of which a civil action for damages may be lawfully brought.

6

Now, if you believe and find from the evidence in this case, beyond a reasonable doubt, that the defendant, George Lee Parker, on or about the 16th day of April, 1954, in the County of Moore and State of Texas, did then and there unlawfully and

without lawful authority, and with the intent to injure and defraud, willfully and fraudulently make a false instrument in writing which said false instrument in writing so made was then and there of the tenor following:

"Cheyenne, Okla 4– 16 1954 No 3
Security State Bank 88–1034
Cheyenne, Okla 1113
Pay to the order of G. L. Parker $38.00
Thirty eight no—100 Dollars
11 PHOEBIA QUATTLEBAUM x
B EZZY QUATTLEBAUM
Member Federal Reserve System Member Federal Deposit Insurance Corporation"

39 then you will find the defendant guilty as charged in the indictment.

But, if you do not so believe and find from the evidence in this case, beyond a reasonable doubt, then you will acquit the defendant, and say by your verdict, "not guilty".

7

You are instructed that an indictment against a person in a criminal case, is not any evidence in said case, and cannot be considered by you as a fact or even a circumstance against the defendant during any of your deliberations.

8

You are further instructed that the defendant had the right, under the law, to go upon the witness stand and testify in his own behalf, but his failure to do so is no evidence or circumstance of his guilt, and you will not consider his failure to testify as any evidence against him; and while you are deliberating upon your verdict, you must not mention, refer to, or take into consideration, by mental reservation or otherwise, his failure to testify, all of which I instruct you, and you must observe and obey.

9

If you find the defendant guilty of forgery, the form of your verdict should be:

"We, the Jury, find the Defendant, George Lee Parker, guilty of forgery, as charged in the indictment, and we assess his punishment at confinement in the penitentiary for ————."

you will fill in the blank with the period of time you assess the defendant's punishment at, so it be not less than two nor more than seven years.

If you acquit the defendant, the form of your verdict should be:

"We, the Jury, find the defendant, George Lee Parker, not guilty".

Which ever form of verdict you agree upon, you will have your foreman sign the same and return it into open court.

10

When you retire, you will select a foreman from your body, and then proceed to deliberate upon a verdict in this case, and when you have reached a verdict, you will have your foreman sign the same and return it into open court.

11

I further instruct you that forgery may be prosecuted in any county where the written instrument was forged, or where the same was used, or passed, or attempted to be used or passed, or deposited or placed with another person, firm, association, or corporation either for collection or credit for the account of any person, firm, association or corporation.

(S) HARRY H. SCHULTZ,
District Judge,
Moore County, Texas.

In the District Court, Moore County, Texas, 69th Judicial District

No. 503

THE STATE OF TEXAS

v.

GEORGE LEE PARKER

Verdict of the jury

Filed November 3, 1954

We, the Jury, find the defendant, George Lee Parker, guilty of forgery, as charged in the indictment, and we assess his punishment at confinement in the penitentiary for (Seven) 7 years.

(S) B. C. CAMPSEY,
Foreman of the Jury.

41 Judgment omitted. Printed side page 6. supra.

42 Sentence omitted. Printed side page 8. supra.

43 Trial Court No. 503

Mandate from Court of Criminal Appeals

THE STATE OF TEXAS:

To the 69th Judicial District Court of Moore County—Greeting:

Before our Court of Criminal Appeals, on the 23rd day of March A.D. 1955, the cause upon appeal to revise or reverse your Judgment between George Lee Parker, Appellant, No. 27501 vs. The State of Texas, Appellee, was determined; and therein our said Court of Criminal Appeals made its order in these words:

"This cause came on to be heard on the transcript of the record of the Court below, and the same being inspected, because it is the opinion of this Court that there was no error in the judgment, it is ordered, adjudged and decreed by the Court that the judgment be in all things affirmed, and that the appellant pay all costs in this behalf expended, and that this decision be certified below for observance."

Wherefore, We command you to observe the order of our said Court of Criminal Appeals in this behalf and in all things to have it duly recognized, obeyed and executed.

Witness, the Hon. W. A. Morrison, Presiding Judge of our said Court of Criminal Appeals, with the Seal thereof annexed, at the City of Austin, this 8th day of April, A.D. 1955.

[SEAL] GLENN HAYNES, *Clerk*.

44 *Docket entry*

Case No. 503

CRIMINAL DOCKET

No. of case	STATE OF TEXAS	Attorneys	Offense	Date of filing: Month	Day	Year
503	v. GEOR E LEE PARKER	F. H. Richards	Forgery	7	26	54

Fee book

Vol | Page

Date of orders	Orders of court	Minute book: Vol	Page	Witnesses information or indictment
11-3-54	This day the defendant announced ready for trial and came a jury of 12 good and lawful men who were tested as to their qualifications and sworn and impaneled to try this case. After hearing the evidence and the charge of the court, the jury retired in charge of a proper officer to consider of their verdict and afterward reported into open Court their verdict finding the defendant guilty as charged in the indictment and assessing his punish- ent at confinement in the penitentiary for seven years, which verdict was by the Court accepted and ordered filed as the verdict of the jury in this Case			

45 *Clerk's certificate*

THE STATE OF TEXAS,
County of Moore:

I, Hazel Haile, District Clerk, Moore County, Texas, hereby certify that the above and foregoing is a true and correct copy of proceedings had in Cause No. 503 wherein the State of Texas vs. George Lee Parker, as the same appear of record in the District Court Minutes of Moore County, Texas.

To certify which, Witness my hand and official seal of office, this the 13th day of June, A.D., 1956.

[SEAL]

HAZEL HAILE,
District Clerk,
Moore County, Texas.

46 Supreme Court of the United States

No. 344 Misc., October Term, 1955

GEORGE L. PARKER, PETITIONER

v.

O. B. ELLIS, GEN. MGR. TEXAS PRISON SYSTEM

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF THE STATE OF TEXAS

Order denying certiorari

On consideration of the petition for a writ of certiorari herein to the Court of Criminal Appeals of the State of Texas, It is ordered by this Court that the said petition be, and the same is hereby, denied.

FEBRUARY 27, 1956.

A true copy:

Test:

HAROLD B. WILLEY,
Clerk of the Supreme Court
of the United States.
By HUGH W. BARR,
Deputy.

Filed in the Court of Criminal Appeals. March 5, 1956.

GLENN HAYNES,
Clerk,
Austin, Texas.

48 *Appendix B to answer*

THE STATE OF TEXAS,
County of Moore:
Know All Men by These Presents:

That I, Harry H. Schultz, Judge of the District Court of the 69th Judicial District of Texas, included in said district are Dallam, Hartley, Moore, Sherman, Deaf Smith and Oldham Counties, Texas; that I was District Judge of said District on November 3, 1954, and I presided over the trial of the case styled, "State of Texas vs. George Lee Parker", No. 503 on the docket of the District Court of said County; that prior to the trial of said case, the defendant in open court was asked whether or not he had counsel and whether he proposed to

enter a plea of guilty or not guilty; that the defendant, George Lee Parker, answered that he did not have counsel and that he proposed to plead "not guilty"; that the defendant was thereupon advised by this Court that if he cared to enter an application for suspended sentence, that this Court would appoint an attorney to represent him, but that if he did not care to enter such application for suspended sentence, that no counsel would be appointed on a plea of not guilty before a jury in a non-capital offense case; that the defendant, George Lee Parker, thereupon advised that he did not want to make application for suspended sentence and no counsel was appointed for him.

That said case proceeded to trial and the defendant was furnished with a list of the jurors on the jury panel which was regularly selected by a jury commission during the prior term. After the jury panel was sworn and examined on voir dire by the court and the counsel representing the State, the defendant was informed that he had the privilege of questioning the members of the jury panel concerning their qualifications and he declined to do this. He was then informed by the court that he had the right to peremptorily challenge eight of the jurors of the first twenty-eight on the panel by scratching out their names on his list. My recollection is that he declined to do this.

49 It is my opinion that throughout the trial the defendant was in full possession of his mental faculties and well understood all of the proceedings and I did not discern any indication of any physical ailment that might have handicapped him in any way. If I had observed any evidence indicating that the defendant was handicapped either mentally or physically, the case would not have been tried at that time, irrespective of any request for postponement by the defendant.

No suggestion was made by the Judge nor by the counsel representing the State in my presence that the defendant plead guilty. The only reference made to a plea of guilty was in the court informing him that the law did not require the court to appoint counsel for him in connection with a plea of not guilty unless he desired to file an application for a suspended sentence, and if he should want to waive trial by a jury and plead guilty, then the court would have to appoint counsel to represent him. To which the defendant replied that he wanted a trial by jury and plead not guilty.

In regard to the testimony introduced during the trial, a full and complete transcript of the testimony was furnished by the court reporter in due time to the defendant's counsel employed by him to prosecute his appeal to the Court of Criminal Appeals and the admissability of the evidence may be judged by that transcript. Apparently this transcript was not filed either with the District Clerk or with the Court of Criminal Appeals.

I certify that the asserted "malicious blistering, bantering and even bartering of the County Attorney, McDonald, to the jury," did not in fact occur.

In regard to the various assertions the defendant makes of occurances during and after the trial, everything that was said and done, except perhaps the jury argument, was fully recorded and it is my opinion that the record does not support his assertions. Hence, it appears that his assertions are his version of what occured and are not supported by the record of trial.

50 A jury of twelve qualified persons was selected, impaneled and sworn; that the indictment was read to the jury and the defendant in open court pled "not guilty" thereto; that the evidence was introduced upon the trial of the case and thereafter the court prepared his charge and submitted the same to the jury; that thereafter the jury returned and considered of their verdict and later returned into open court, in the presence of the defendant, their verdict, finding the defendant guilty of forgery as charged in the indictment, and assessing his punishment at confinement in the penitentiary for seven years; that judgment was entered upon said verdict and thereafter sentence was entered.

That thereafter the defendant, George Lee Parker, gave notice of appeal and appealed said case to the Court of Criminal Appeals, State of Texas, and said cause was affirmed by Court of Criminal Appeals as shown by the mandate of said Court in the transcript of the Clerk of this Court attached hereto. That after the said verdict was affirmed the defendant, George Lee Parker, was transported to the State Penitentiary to serve his sentence.

That the opinion of the Honorable Court of Criminal Appeals of the State of Texas is published in the Southwestern Reporter and can be found in Volume 276, Southwestern Re-

porter 2nd Series, page 533 (2nd case). That no statement of facts is on file with the Clerk of the District Court.

A copy of this certificate has been filed in the papers in this cause with the Clerk of the District Court of Moore County, 69th Judicial District of Texas.

To certify which witness my official signature at Dalhart, Texas, on this the 18th day of June, 1956.

Harry H. Schultz.
HARRY H. SCHULTZ,
District Judge,
69th Judicial District of Texas,
Moore County, Texas.

51 BUREAU OF RECORDS AND IDENTIFICATION, TEXAS PRISON SYSTEM

STATEMENT

Reg. No.: 133352. Name: Parker, George Lee. Race: White. Alias: ..... Age when received: 66. County: Moore. Location: Huntsville. Crime: Forgery (1). Plea: Not guilty. Date of sentence: To begin 4-11-55. Term of years: 7. Received: 4-13-55. Served time: 1 yr. 2 mos. 0 day. Good time earned to date: 0 yr. 10 mo. 9 days. Total time to credit: 2 yrs. 0 mo. 9 days. Discharge date with commutation time; and trusty time; 6-6-59. Out of custody: .... yrs ..... mos. .... days. Remarks and charges of misconduct: X—Other Prison (7).

9-7-55. Proclamation #55-0088. 30 day commutation of sentence.

No detainers.

O. B. ELLIS,
General Manager.
By LILA CURTIS,
Record Clerk.
J. C. ROBERTS,
Chief.

Huntsville, Texas, 6-11-56.
Request of Mr. Roberts.

52 Homer Garrison, Jr., Director Form 6

THE STATE OF TEXAS

DEPARTMENT OF PUBLIC SAFETY

AUSTIN, *June 6, 1956*

The following is a transcript of the record, including the most recently reported data, as shown in the files of the State Bureau of Identification and Records concerning your number 64272.

FPC: 8?/ 1 R III 9?
1 U 101 5?

F.B.I. Number 1401073

GLEN H. MCLAUGHLIN,
Chief,
Bureau of Identification and Records.

Arrested or received	Contributor of fingerprints	Number	Name	Charge	Disposition
3-14-22	McAlester, Okla	SP#12116	George Parker	Disposing of mort prop	1 yr. 1 day from Pittsburg Co
10-5-25	McAlester, Okla	SP#15475	George L. Parker	Worthless Check	1 yr
3-11-27	McAlester, Okla	SP#17224	George L. Parker	Forg	[illegible]
11-14-35	Watonga, Okla	SO#340	George L. Parker	Not given. Held for SO, Chickasha, Okla	
3-28-36	Chickasha, Okla	SO#172	George L. Parker	Bogus Check	
8-15-37	Blytheville, Ark	SO#	George Olen Parker	Forg	
11-12-37	Gorild, Ark	SP#39254	George Parker	Forg and uttering	1 yr
12-9-38	Paragould, Ark	SO#	George Olen Parker	Hot Checks	
5-25-39	Gorild, Ark	SP#37710	George Parker	False pretense	1 yr. from Craighead County
9-15-41	Kennett, Mo	SO#	Lee Parker	Forg	
10-30-41	Jefferson City, Mo	SP#55728	Frank C. Parker	Forg	P.C. 3 yrs 9-24-43 Disch. Good conduct
3-24-48 53	Jefferson City, Mo	SP#55728	Frank Parker	P.V. forg	3 yrs conditional sent. & refinanced for 5 yrs
8-20-48	Jefferson City, Mo.	SP#61698	Frank Parker	Forg	2 yrs 7-19-49 to run
9-20-50	Dumas, Texas	SO#	Geo. Lee Parker	Dbt	Limit
4-13-55	Huntsville, Texas	SP#133352	Geo. Lee Parker	Forg	7 yrs. from Moore Co

*Represents notations unsupported by fingerprints.

For completion of our records, please supply dispositions to this Bureau if any of the foregoing cases where they do not appear.

54 *Appendix C to answer*

55 In the Court of Criminal Appeals, Austin, Texas

EX PARTE GEORGE LEE PARKER, PETITIONER
PER SE

AFFIDAVIT IN FORMA PAUPERIS

Motion to be allowed to file and proceed "In Forma Pauperis"

I, George Lee Parker, petitioner in the hereunto attached application for the writ of Habeas Corpus, am a native born citizen of the United States, past the age of 21 years, and am an indigent person, without funds or means to prepay costs of filing and prosecuting the cause. I respectfully move this Honorable Court grant me leave to file this cause without payment of costs thereof.

I have no assets with which to secure collateral and unless granted this right to proceed as an impecunious person as is guaranteed by the Constitution of the United States in Sec. 1915 title 28 U.S.C.A. I shall be unable to proceed.

Most Respectfully Submittted.

GEO. L. PARKER,
Petitioner Per Se.

STATE OF TEXAS,
County of Walker, ss:

On this day personally appeared before me a notary public, George Lee Parker and after first being duly sworn deposes and says the above statement is his and is true and correct to his own best knowledge and belief.

Sworn to and subscribed before me a notary public, in and for Walker County, Texas, this the 29 day of August 1955 A.D.

[SEAL] T. T. EASLEY,
Notary Public,
Walker County, Tex.

My commission expires 1 June 1957.

56 In the Court of Criminal Appeals, Austin, Texas

No. 1955 A.D.

EX PARTE GEORGE LEE PARKER, PETITIONER, PER SE

v.

O. B. ELLIS, GEN. MGR., TEXAS PRISON SYSTEM, THE STATE OF TEXAS, RESPONDENTS, ET AL.

APPLICATION FOR THE WRIT OF HABEAS CORPUS

"Habeas Corpus"

"Cum-Causa"

To the Honorable Presiding Judge and Associate Judges of the Court of Criminal Appeals, Austin, Texas:

May it Please the Court:

Comes now George Lee Parker Petitioner in the foregoing application for the writ of habeas corpus, in proper person, without aid or advise of counsel who is now and has been incarcerated in the Texas State penitentiary at Huntsville, Texas.

Petitioner herein makes this his original application for the Writ of Habeas Corpus and for that purpose would show to this Honorable Court that he is being illegally restrained in his liberty by the respondent O. B. Ellis, Gen. Mgr. Texas Prison System or his authorized agents, by virtue of certain commitments issued out of Moore County, Texas, or by other process to petitioner unknown. Such commitment is illegal null and void and of no effect since it issues from a judgment had in Moore County, Texas, in direct Violation of Constitutional rights both Federal and State, in denial of equal protection and due process of law.

57 The United States Supreme Court has ruled that a conviction had without due process of law cannot stand, and a person so convicted is due a discharge by the Writ of Habeas Corpus: Authority 28 U.S.C.A. 541–461, U.S. 463, U.S. R.S. 716.

Petitioner herein contends that this Honorable Court has jurisdiction to hear and determine the facts set forth herein, and make findings returnable to the Court of Criminal Appeals at Austin, Texas, for their final adjudication. Reasons for action are as follows, to-wit:

Petitioner was indicted in Moore County, Texas, during March term of Court 1954 on one charge of *"Forgery"* (no passing), Cause No. 503.

On November 3, 1954 petitioner went to trial on Cause No. 503, plead not guilty, found guilty as charged, assessed penalty of seven (7) years.

Attached, and made a part of this instrument is a certified, typewritten copy of judgment of conviction. The sterotype wording of judgment states in part, "his counsel also being present". This sterotype wording is in error since petitioner was not represented in any way by counsel of his own choosing, or appointed counsel of the state. Petitioner made formal request for assistance of counsel and was denied request. Due to physical condition of petitioner, he was unable to adequately protect his constitutional rights, therefore was tried without due process of law. U.S.C.A. 14th amend., Art. 1, Sec. 19, Const. of Texas.

As aforementioned, petitioner was tried without the guiding hand of legal counsel. He has exhausted all remedies available to him to secure affidavits to this effect, but can receive no reply. Therefore petitioner respectfully moves this Honorable Court secure documents to this effect. The
58 6th Amendment U.S. Const. Amend. is specific in that it guarantees that among other things, all accused of crime shall be represented by counsel. Also Article 1, Section 10, Constitution of the State of Texas is specific in this matter.,

Transcript of record of above trial, available to this Honorable Court, but unavailable to petitioner due to his impecunious condition will show that although petitioner was charged with the offense of forgery, convicted of the offense of forgery, all testimony given at time of trial points to the fact that petitioner did not forge the instrument. Testimony of Elzie Quattlebaum specifically shows that check was not written by petitioner.

Petitioner would respectfully submit to this Honorable Court the following list of reputable witnesses that stand ready to testify that petitioner did not forge said instrument:

1. Mr. and Mrs. Carl Hammer, Sunray, Texas.
2. Mr. and Mrs. T. C. Richardson, Sunray, Texas.
3.
4. Elzie Quattlebaum, Sunray, Texas.
5. Mr. T. H. Cain, Sunray, Texas.

Petitioner was unable to have the above witnesses at his trial, since he was denied assistance of counsel and knew nothing of law, or how to proceed in securing witnesses. The testimony of Elzie Quattlebaum at time of trial, as is in transcript of record would tend to show uncertainty in the charge. When asked if he knew whether petitioner signed check, or if it contained handwriting of petitioner he said, "It could be his, at least it sure isn't mine".

Petitioner should not have been tried for the offense of forgery. The offense of passing a forged instrument would
59 have been proper, and petitioner would have pled guilty to a charge of that nature. Forgery, and the passing of a forged instrument are two separate, individual charges with different penalties, therefore where petitioner was tried on one, (forgery) and evidence all points to the effect that he was not guilty of forgery, and no mention is made in the indictment of the charge of passing a forged instrument, petitioner was tried without due process of law, and it constitutes a reversible error.

Petitioner would further show that prior to, at the time of, and at present, he was under care of doctors, and was under constant strain, therefore his physical and mental condition was such that it would be impossible for him to intelligently defend himself, even if he were versed in the intricate operations of the law. He was denied his right of appeal since he did not know the proper procedure of entering an appeal. Petitioner herein attaches letters from reputable doctors stating fully the physical condition of petitioner.

Petitioner herein respectfully moves this honorable court, after reviewing all facts as set forth herein, grant petitioner a hearing to determine the facts as set forth herein, ordering records be sent down from Moore County, Texas, to substantiate the contentions set forth herein. That findings may be sent on to the Court of Criminal Appeals at Austin, Texas, to end for once and for all this illegal and unjust penal servitude, as is set forth in Article 119 C.C.P. and your petitioner shall so ever pray.

Most Respectfully Submitted.

GEO. L. PARKER,
Petitioner Per Se.

60 STATE OF TEXAS,
County of Walker, ss:

On this day personally appeared before me a Notary public, George Lee Parker, and after first being duly sworn, deposes and says he is the true petitioner in this Habeas Corpus Action, and that he knows the contents therein, that they are true and correct to his own best knowledge and belief.

Sworn to and Subscribed before me a Notary Public in and for Walker County, Texas, this the 9 day of August 1955 A.D.

[SEAL] T. T. EASLEY,
Notary Public,
Walker County, Texas.

My comm. exp. 1 July 1957.

61 *Order of Judge Morrison, dated September 21, 1955*

[Omitted. Printed side page 10, supra.]

62 Court of Criminal Appeals, Austin, Texas

EX PARTE GEORGE L. PARKER, PETITIONER

v.

O. B. ELLIS, GEN. MGR., TEXAS PRISON SYSTEM, RESPONDENT

MOTION FOR REHEARING

On September 21, 1955 Application for the Writ of Habeas Corpus, Order No. 184 was denied by this Honorable Court. Petitioner respectfully moves this Honorable Court grant a rehearing.

Petitioner contended that he was not represented by counsel. The 6th Amendment U.S. Constitution requires that a defendant be represented by counsel, as well as article 1 section 10 Const. St. Texas. If petitioner had been represented by counsel as required by the Constitution he could have received continuance as he complains that he was ill at time of trial, therefore petitioner was denied due protection of Law.

Petitioner herein respectfully prays this Honorable Court grant this prayed for motion for rehearing.

Most respectfully submitted.

GEO. L. PARKER,
Petitioner Per Se.

63 In the United States District Court, Southern District of Texas, Houston Division

[Title omitted.]
[File endorsement omitted.]

Answer of George Lee Parker, petitioner

Filed August 17, 1956

To the Honorable Court:

Comes now, George Lee Parker and Presents his answer to the Respondent, O. B. Ellis and State of Texas in the above entitled and numbered cause, and says;

The Counsel for Respondent, Honorable John A. Whild, Attorney General of Texas, Concedes the Petitioner was as alleged in his original application for a Writ of Habeas Corpus denied and deprived of his rights to the aid, advice and service of counsel at his trial and conviction under which he is now confined in the State Penitentiary of Texas for a term of seven (7) years: And Counsel for the State yields to the Petitioners need of the assistance of Counsel whereby it is shown under his Appendix "A" the indictment Charged the Petitioner with the offence of "Forgery" alleged to have been Committed in the State of Oklahoma, beyond the jurisdiction of the Court.

The attention of the Honorable Court is directed to the case of Williams vs. Kaiser, 322 U.S. 725, 64 S. Ct. 1289, where it is said: "These are reasons why the rights to Counsel are fundamental." Powell v. Alabama, 287 U.S. at page 70, 53 S. Ct. at page 64, 77 L. Ed. 158, 84 A.L.R. 527; "Grosjean v. American Press Co." 297 U.S. 233, 243, 244, 56 S.Ct. 444, 446, 447, 80 L. Ed. 660; "Avery v. Alabama", 308 U.S. 444, 447, 60 S. Ct. 321, 322, 84 L. Ed. 377. They indicate the protection which the individual needs when charged with Crime. Prompt and expeditious detection and punishment of Crime are necessary for the protection of society. But that may not be done at the expence of the Civil Rights of the citizen. Law enforcement may not be inefficient when accommodated to the Constitutional guarantees of the individual. Powell v. Alabama, 287 U.S. 45, 68–69 (1932). "The right to be heard would be, in many cases, of little or no avail if it did not comprehend the right to be heard by counsel. Even
64 the intelligent and educated layman has small and some-

times no skill in the science of law. If charged with a crime, he is incapable of determining whether the indictment is legal or illegal. He is unfamiliar with the rules of evidence, without the aid of Counsel, he may be put on trial without a proper charge and convicted on incompetent evidence or evidence irrelevant to the issue or otherwise inadmissable. He lacks the skill and knowledge to prepare an adequate defence. The guiding hand of Counsel is required at every step of the proceedings against him, without it, even though he may be innocent, he faces the danger of conviction because he does not know how to legally establish his innocence.

In State Prosecution, a conviction on a plea of guilty obtained by a trick. "Smith v. O'Grady" 312 U.S. 329, 334, 61 S. Ct. 572, 574, 85 L. Ed. 859, or, after refusal of a proper request for Counsel, because of the accused's incapacity adequately to defend himself, "Williams v. Kaiser" 323 U.S. 471, 472, 65 S. Ct. 363, 364. Will not support imprisonment. Such procedure violates the fourteenth amendment to the Constitution. See "Tomkins v. Missouri" 323 U.S. 485, 65 S. Ct. 370; "Cockran v. Kansas" 316 U.S. 255, 63 S. Ct. 1068, 86 L. Ed. 1453. That amendment is violated also when a defendant is forced by a State to trial in such a way as to deprive him of the effective assistance of Counsel. "Powell v. Alabama" 287 U.S. 52, 58, 53 S. Ct. 58, 60, 77 L. Ed. 158, 84 A.L.R. 527; "House v. Mayo" 324 U.S. 42, 65 S. Ct. 572. Compare Ex Parte Hawk 321 U.S. 114, 64 S. Ct. 448, 88 L. Ed. 572; "Glasser v. U.S." 315 U.S. 60, 69, 70, 62 S. Ct. 457, 464, 465, 86 L. Ed. 680. When the State does not provide corrective Judicial Process, the Federal Courts will entertain habeas corpus to redress the violation of the Federal Constitutional right. "White v. Ragan" 324 U.S. 760, 65 S. Ct. 978. When the corrective process is provided by the State but error, in relation to the Federal question of Constitutional violation creeps into the records, we have the responsibility to review the State proceedings. "William v. Kaiser" 323 U.S. 471, 472, 65 S. Ct. 363, 364; "Tomkins v. Missouri (supra)".

"Massey v. State" 347 U.S. 1011.—Numerous decisions of this Court make it perfectly clear that if a sane but ignorant layman is tried in a State court without counsel on a serious criminal charge, his inability to comprehend the legal issues before, will invalidate his conviction. See "Palmer v. Ashe" 342 U.S. 134 (1951); "Gibbs v. Burke" 337 U.S. 773, 780 (1949);

"Aveges v. Pennsylvania" 335 U.S. 437 (1948); "Wade v. Mayo" 334 U.S. 672 (1948); "DeMeerler v. Michigan" 329 U.S. 663 (1947); "Rice v. Olsen" 324 U.S. 786 (1945) "Smith v. O'Grady" 312 U.S. 329 (1941);

The undisputed facts is that our Federal Constitution interpeted in its meaning clearly expressed that all citizens when accused of crime shall not stand helpless and alone before
65 a court of this United States though he be as in the instant case, ignorant, indigent and unable to defend himself, nor that he will be compelled to stand shoulder to shoulder with one skilled and versed in the science of Law to defend himself in an unfamiliar proceeding with which he knows not even the interpretation or meaning of the words allayed before him or in what manner to cross examine his accuser whereas the case in hand. It is evident from the statement of the trial Court that this Petitioner was denied the aid and assistance of Counsel at his trial and conviction in Moore County, Texas. Such denial being in violation of this Petitioner's Constitutional rights and it further being evident this Petitioner was deprived of his rights to the protection of the Laws applicable to the offense under which he was tried and convicted.

Whereas, your Petitioner, George Lee Parker, respectfully prays that this Honorable Court grant a writ of habeas corpus and set this matter down for a hearing at a time convenient to the Court and upon final hearing thereon, this Honorable Court order the Petitioner be fully discharged from his illegal restraint and confinement.

George Lee Parker,
GEORGE LEE PARKER,
Box #32, Huntsville, Texas.

Sworn to and subscribed before me, a notary public in and for Walker County, Texas, this the 15th day of August 1956.

[SEAL] WILFORD BURDEAUX,
Notary Public,
Walker County, Texas.

My commission expires June 1, 1957.

68 *Affidavit of Maggie Parker*

Civil Action No. 9783

Filed 10 day of August, 1956. V. Bailey Thomas, Clerk, Christopher Jones, Deputy.

STATE OF TEXAS,
Moore County, ss:

To Whom It May Concern, Greetings:

Comes, now, one Mrs. Maggie Parker, nee Quattlebaum, who, after having been, duly sworn states:

That, She is a sister of Elzie Quattlebaum and the Wife of George Lee Parker, ever since the month of May 1909, and

That, for several years her brother, Elzie has been a bitter enemy of her husband, Geo. L. Parker against whom her bro., Elzie, became the Complaining Witness on an, apparently, trumped up charge of forgery in the Dist. Court, in Moore County, Texas, and

That, the bank account, at Cheyenne, Okla. on which the controversial check was drawn, was in her mothers name, Mrs. Phoebia Quattlebaum, not in her Bro. Elzie Quattlebaum, the Prosecuting Witness against her husband.

Respectfully submitted

MAGGIE PARKER.

STATE OF TEXAS,
County of Moore:

Subscribed and sworn to before me, a notary public in and for said county and state on this the 7th day of July 1956.

[SEAL] H. B. POSTER,
Notary Public.

My com. expires 1st day of June 1957.

69 *Affidavit of Mrs. Carl Hammer*

Civil Action No. 9783

Filed 10 day of August, 1956. V. Bailey Thomas, Clerk, Christopher Jones, Deputy.

"*Acknowledgment*

STATE OF TEXAS,
County of Moore:

To Whom It May Concern:

Comes now "Mrs. Carl Hammer; who after being duly sworn states:

That "Geo. L. Parker was in Jail at Dumas, Moore County, Texas; on a charge of check forgery, about Oct 1, 1954. I went up there to see about Posting Bond for him. But was told by Horace Myrick, Chief Deputy Sheriff, they were not going to let Mr. Parker make bond. They were to keep him in Jail until Court convened..

Mrs. Carl Hammer
MRS. CARL HAMMER

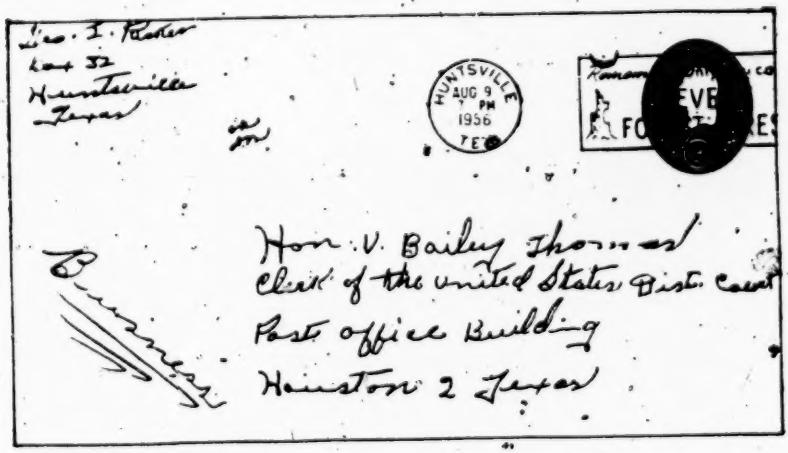
STATE OF TEXAS,
County of Moore, ss:

Subscribed and sworn to before me a Notary Public. in and for said County and State. this 15th day of May A.D. 1956.

[SEAL] LUCILLE GARVIN,
Notary Public
in and for Moore County Texas.

My commission expires the 1st day of June 1957.

70



71 In the United States District Court for the Southern District of Texas

In Civil Action No. 9783

EX PARTE GEO. L. PARKER,
PETITIONER PER SE.

AFFIDAVIT IN FORMA PAUPERIS

Affidavit of Geo. Lee Parker

Motion asking an attorney be appointed by the Honorable Thomas M. Kennerly, Judge:

I George Lee Parker, Petitioner in the hereunto attached application for the appointment of an attorney for his defence in the honarable court, am a native born citizen of the United States past the age of 21 years. And am an indigent person without funds or means to pay with. I respectfully move this honorable court to appoint counsel for my defence, without cost to your petitioner. I have no assets to use as collateral to procure funds for such defense.

Most Respectfully Submited.

GEO. LEE PARKER,
Petitioner Per se.

STATE OF TEXAS,
County of Walker, ss:

On this day personally appeard before me a notary public, Geo. Lee Parker, and after first being duly sworn deposes and says that the above statement is his and is true and correct to his own best knowledge and belief.

Sworn to and subscribed before me a notary public in and for Walker County, Texas, this the 19th day of July 1956 A.D.

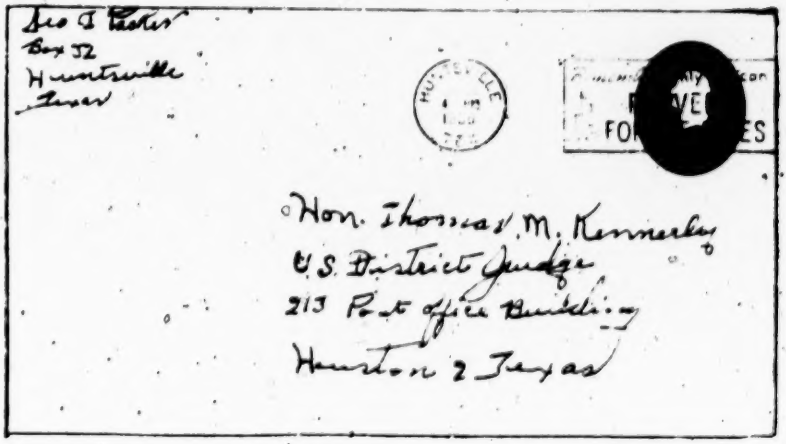
[SEAL] WILFORD BURDEAUX,
Notary Public,
Walker County Texas.

Filed 23 day of July, 1956. V. Bailey Thomas, Clerk, by L. M. Berly, Deputy.

My commission expirs June 1, 1957.

The clerk will file. Kennerly, Judge. 7 23 56.

72



73 In the United States District Court, Southern District of Texas, Houston Division

[Title omitted.]
[File endorsement omitted.]

Memorandum and order

October 8, 1956

Upon the filing of this, the petition of George Lee Parker, an inmate of the Texas State penitentiary, for the Writ of Habeas Corpus, an order was entered calling upon the State of Texas and O. B. Ellis, General Manager of the Texas Prison System, to answer such petition. Such order is dated May 31, 1956, to which I refer.

Such Answer, with copy of the proceedings against Parker in the District Court of Moore County, Texas, and of the Court of Criminal Appeals of Texas (276 S.W. (2d) 533), has been filed. The Replication of Parker thereto has been filed. The issues of law and facts are thereby presented of whether Parker is in custody in violation of the Constitution, Laws, or Treaties of the United States (Section 2241(c)(3), Title 28, U.S.C.A.), in that at his trial in the State Court:

(a) He was not represented by counsel.

(b) He was (as he claims) sick when tried.

(c) The evidence (as he claims) was insufficient to support his conviction.

It Is, Therefore, Ordered:

(1) That the evidence in this matter be taken by November 5, 1956, under Section 2246, Title 28, U.S.C.A., by deposition and affidavit, etc.

(2) That by November 5, 1956, briefs prepared in accordance with Local District Court Rule 29 be filed by the parties.

74 (3) It appearing that if possible the Statement of Facts at the trial should be produced, attention is called to the following language in Parker's pleadings:

"The plaintiff herein respectfully states that after his trial and conviction, that his friends paid for three (3) copies of the statement of facts, distributed as follows: One copy was left at the court clerk's office, Dumas, Texas, one copy sent to Court of Criminal Appeals, and one copy is in the office of James Lovell, an atty. at Dumas, Texas. Geo. L. Parker has made repeated efforts to obtain one of these copies, to no avail."

It is believed that one of such copies can be obtained for use here.

The Clerk will record this Memorandum and Order on the minutes of the Court and furnish Parker and the Attorney General of Texas each with a copy hereof.

Done at Houston, Texas, this October 8, 1956.

T. M. KENNERLY,
United States District Judge.

76 In the United States District Court, Southern District of Texas, Houston Division

Civil Action No. 9783

IN THE MATTER OF PETITION OF GEORGE LEE PARKER FOR THE WRIT OF HABEAS CORPUS

[File endorsement omitted.]

Order of dismissal

January 8, 1957

No record of facts having been developed, in accordance with the Memorandum and Order of this Court, dated October 8, 1956, the Petition of George Lee Parker for the Writ of Habeas Corpus is dismissed.

Certified copies of this order will be forwarded by the clerk to Parker and the Attorney General of Texas.

Done at Houston, Texas, this January 8, 1957.

JOE INGRAHAM,
United States District Judge.

78 In United States District Court

C.A. 9783

STATE OF TEXAS,
County of Walker:

[Title omitted]

[File endorsement omitted.]

Motion for rehearing

Filed April 29, 1957

Comes now George Lee Parker, referred to as petitioner and prays this Honorable Court reconsider his original application for the following reasons to-wit:

First: Your petitioner has with the aid of a friend obtained and hereby offers to his honorable court the Transcript and Statement of Facts in the *in the* case. Your petitioner, having no funds to pay for same; Dr. E. H. Boaz, Box 32, Huntsville, Texas, has paid $25.00 for Transcript and Statement of Facts and has loaned same to your petitioner, George Lee Parker, to be used by this Honorable Court. The Transcript and Statement of Facts were received by petitioner on the 22nd day of March, 1957.

Second: Petitioner alleges that he is in custody in in direct violation of the Constitution, Laws and Treaties of the United States (Section 22(c)(3), Title 28 USCA), in that, at his trial in the State Courts:

79 (a) He was not represented by Counsel.

(b) He was indisposed when tried.

(c) The evidence was insufficient to support his conviction.

Third: The further attention of the Honorable Court is directed to the Statement of Facts pages 2 to 34.

At no time during the trial was petitioner ever represented by counsel, page 2. Statement of Facts indicates petitioner was denied the aid and advice of counsel in direct violation of Constitutional rights, both Federal and State. Art. 6, U.S. Constitution Art. 1, Sec. 10, State Constitution.

The further attention of the Honorable Court is directed to the case of Williams vs. Kaiser, 322 U.S. 725, 64 Ct. 1289, where it is said: "These are reasons why the right to Counsel is fundamental."

80 In the matter of George Lee Parker, Petitioner, Motion for Rehearing in the Federal Court of Houston, Texas) Powell vs. Alabama, 287 U.S. at page 70, 53 S. Ct. at page 64, 77 L. Ed. 158, 84 A.L.R. 527: Grosjean vs. American Press Co. 297 U S. 233, 243, 244, 56 S. Ct. 444, 446, 447, 80 L. Ed. 660; Avery vs. Alabama, 308 U.S. 444, 447, 60 S. Ct. 321, 322, 84 L. Ed. 377. "They indicate the protection which the individual needs when charged with crime. Prompt and expeditious detection and punishment of crime are necessary for the protection of society. But that may not be done at the expense of the Civil Rights of the citizen. Law enforcement need not be inefficient when accommodated to the Constitutional guarantees of the citizen."

Powell vs. Alabama, 287 U.S. 45, 68–69 (1932) "The right to be heard would be, in many cases, of little or no avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometime no skill in the science of law. If charged with crime he is incapable, generally of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence and, left without the aid of counsel, he may be put on trial without a proper charge, and convicted upon incompetent evidence or evidence irrelevant to the issue or otherwise inadmissable.

81 He lacks both the skill and knowledge adequate to prepare his defense, even though he may have a perfect one. He requires the guiding hand of counsel at every step of the proceedings against him. Without it, though he be not guilty he faces the danger of conviction because he does not know how to establish his innocence.

"In State prosecution a conviction on a plea of guilty" obtained by a trick, Smith vs. O'Grady, 312 U.S. 329; 334 61 S. Ct. 572, 574, 85 L. Ed. 859, or, after refusal of a proper request for counsel, because of the accused's incapacity adequataly to defend himself. William vs. Kaiser, 323 U.S. 471, 472, 62 S. Ct. 363, 364 will not support imprisonment. Such procedure violates the fourteenth Amdt. to the Constitution. See Tompkins vs. Missouri, 323 U.S. 485, 65 S. Ct. 1068, 86 L. Ed. 1453.

That amendment is violated also when a defendant is forced by a state to trial in such a way as to deprive him of the effective assistance of counsel. Powell vs. Alabama, 287 U.S. 52, 58, 53 S. Ct. 58, 60, 77 L. Ed. 158, 84 A.L.R. 527; House vs. Mays, 324 U.S. 42, 65 S. Ct., 572; Compare Ex Parte Hawk, 321 U.S. 114, 64 S. Ct. 488, 88 L. Ed. 572; Glasser vs. United States, 315 U.S. 60, 69, 70, 62 S. Ct. 457, 464, 465, 86 L. Ed. 689.

82 When the state does not provide corrective judicial process, the Federal Courts will entertain Habeas Corpus to redress the violation the Federal Constitutional rights. White vs. Ragan, 324 U.S. 760, 65 S. Ct. 978. When the corrective process is provided by the State, but error, in relation to the Federal question of Constitutional violation, creeps into the record, we have the responsibility to review the State proceedings.

"Williams vs. Kaiser, 323 U.S. 471, 472, 65 S. Ct. 363, 364; Tompkins vs. Missouri (supra).

Massey vs. State, 347 U.S. 1011

"Numerous decisions of this court make it perfectly clear that if a sane but ignorant layman is tried in a State court without counsel, on a serious criminal charge, his inability to comprehend the legal issues will invalidate his conviction." See Palmer vs. Ashe 342 U.S. 134 (1951) Gibbs vs. Burke, 337 U.S. 773, 780 (1949); Wade vs. Mays, 334 U.S. 672 (1948) DeMeerless vs. Michigan, 329 U.S. 663 (1947); Rice vs. Olson 324 U.S. 786 (1945) Smith vs. O'Grady 312 U.S. 329 (1941).

The undisputed fact is that our Federal Constitution interpreted in its meaning, clearly expressed that all citizens when accused of crime shall not stand helpless and alone before a court of this United States, though he be in the instant case ignorant, indigent and unable to defend himself.

83 Nor, that he will be compelled to stand shoulder to shoulder with one skilled and versed in the science of law to defend himself in an unfamiliar proceeding with which he knows not even the interpretation or meaning of the word allayed before him or in what manner to cross-examine his accuser when, as in the case in hand to compel him to divulge the instrument was authorized by him in the State of Oklahoma and the signature affixed was not that of your Petitioner.

Whereas it is evident to this Honorable Court, the Petitioner was denied the aid and assistance of counsel at his trial and conviction in Moore County, Texas As is shown by her Attorney-General of Texas, in violation of the Constitution of the United States and, it further being evidence the Petitioner was deprived of his rights to the protection of the laws applicable to the offense under which he was tried and convicted in violation of the Laws and Constitution of the United States.

(b) Was Sick When Tried

The attention of the Honorable Court is called to several letters now on file with the Honorable Court C.A. 9783, Houston Division in matter of Petitioner George Lee Parker, Civil Action No. 9783.

84 Said letters are written and signed by doctors at Houghton and Liberal, Kansas who treated petitioner from mid 1953 until his trial in November, 1954. Further attention is called to the following witness and Statement of Facts.

Statement of Ted Cain: Lines 22, 23, 24, 25 on Page 22, and Lines 1–2, Page 23.

Statement of John H. Worst, County Commissioner of Moore County: Lines 1–14, Page 25.

Statement of Carl Hammer: Lines 10–22, Page 27: Lines 1–7 Page 28.

Statement of Thomas W. James: Lines 15–25, Page 28, Lines 1–12, Page 29.

Statement of Everett Tooney: Lines 18–25, Page 29.

Statement of John Easley, Sheriff of Moore County: Lines 22–25, Page 17.

(c) The evidence was insufficient to support conviction. The attention of this Honorable Court is directed to the testimony of Elzy Quattelbaum a brother-in-Law of Petitioner, who had personally know petitioner for more than 45 years and for 20 years has been the most unscrupulous enemy Petitioner has ever had.

85 Please see certified statement of Mrs. Maggie Parker in C.A. 9783 filed in this Honourable Court; See Lines 13–21 on Page 10. The special attention of the Court is directed to Line 19. On the same page; see also Lines 19–20 on Page 11.

Mr. Baer banker, was called by the state as an handwriting expert: Attention is called to Lines 12–19 Page 13; Line 25, page 14; Lines 1–25, page 15; Lines 1–7, page 16:

(Statement of Facts)

Little need be said about the hearsay testimony of Sheriff Easley on Page 17. Petitioner certifies that at no time did he ever make a statement to Sheriff Easley or anyone else that he wrote or endorsed such check. It is true, however, that Petitioner did tell Sheriff Easley that he did write two small checks made payable to Everett Tooney (Page 30 Statement of Facts). It was this same Sheriff Easley who rushed to the stand with a list purported to be convictions against George L. Parker and could not read them. He admitted that he was confused and didn't really know how many convictions there were. (See Statement of Facts; Line 2, page 32 Lines 9–12, page 32; Lines 8-19, page 33.

86 The jury was impressed by Sheriff Easley's statements about the possibility of convictions. Certainly, under the rules of evidence, such testimony was not admissable unless nor until the defendant in a criminal case is placed on the witness stand. Here again Petitioner was denied his Constitutional rights.

May it please the Honourable Court, the Petitioner herein respectfully submits that trial court proceedings in the instant cause were highly improper, unlawful, and exceedingly damaging to the interests of the Petitioner: but fits in admirably with the statement under the oath of office that George L. Parker was present in Court, his counsel also being present (Transcript, Page 9).

Petitioner certifies that he never had any dealing whatsoever with Margaret Ann Castle (Page 18, Statement of facts). Her job was in the Information Desk and I never saw her in the teller's cage at any time. Her capacity in the bank was never stated by the County Attorney. Your Petitioner alleges that County Attorney McDonald, seeing that he had no evidence to support a charge of forgery, called on his good friend Miss Castle, and placed her on the stand as the last witness to impress the jury and there the State rested

87 the case. Again, Petitioner calls attention to Charge of the court (Transcript, Page 3, par. 11), the last paragraph in the Court's Charge. Again the jury could have been misled.

Petitioner should not have been tried for the offence of forgery, the offence of passing a forged instrument would have been proper, and Petitioner could have been convicted on a charge of that nature. Forgery and the passing of a forged instrument are two separate charges with different penalties:

Art. 979: Forgery 2–7 years.

Art. 996: Passing a forged instrument 2–5 years.

Therefore when Petitioner was tried on one (forgery) and evidence all points to the effect that he was not guilty of forgery; and no mention is made in the indictment of the charge of passing a forged instrument, Petitioner was tried without due process of Law, and it constitutes a reversible error.

Petitioner would further show that prior to, at the time of, and at present, he was under the care of doctors, and was under constant strain. Therefore, his physical and mental condition was such that it would be impossible for him to intelligently defend himself, even if he were versed in the intricate operations of the law. He was denied his rights of appeal since he did not know the proper procedure for entering an appeal. Petitioner has letter on file with this Honourable Court from reputable doctors stating fully the physical condition of Petitioner.

88 Petitioner herein respectfully moves this court, after reviewing all facts as set forth herein grant Petitioner a hearing to determine the injury received at the hands of those in authority in the State courts, and various and divers denials of his rights as an American citizen. George Lee Parker prays that this Honorable Court will Grant unto him such relief as in the Court's opinion may seem mete and proper based upon the facts in the proceedings as he finds them to be to George Lee Parker, and said Parker will ever pray.

George Lee Parker.
GEORGE LEE PARKER.

STATE OF TEXAS,
County of Walker:

On this day personally before me, a notary public, George Lee Parker, and after first being duly sworn, deposes and states that the above statement is his and is true and correct to

his own best knowledge and belief. Sworn to and subscribed before me a notary public in and for Walker County, Texas.

This the 20th day of April 1957.

[SEAL] WILFORD BURDEAUX,
Notary Public,
Walker County, Texas.

My commission expires June 1, 1957.

89 In United States District Court for the Southern District of Texas

EX PARTE GEORGE L. PARKER, PETITIONER PER SE

AFFIDAVIT IN FORMA PAUPERIS

Affidavit of George Lee Parker

Filed April 29, 1957

Motion asking an attorney be appointed by the Honorable Thomas M. Kennerly, Judge.

I, George Lee Parker, petitioner in the hereunto attached application for the appointment of an attorney for his defense in the Honorable Court. I am a native born citizen of the United States, past the age of 21 years, and am an indigent person, without funds or means to pay with.

I respectfully move this honorable court to appoint counsel for my defense without cost to your petitioner.

I, George Lee Parker, have no assets to use as collateral to procure funds for such defense.

Most respectfully submitted.

GEORGE LEE PARKER,
Petitioner Per Se.

[File endorsement omitted.]

90 STATE OF TEXAS,
County of Walker:

On this day personally appeared before me, a notary public, George Lee Parker, and after first being duly sworn deposes and says that the above statement is his and is true and correct, to his own best knowledge and belief.

Sworn to and subscribed before me a notary public in and for Walker County, Texas, this the 20th day of April 1957.

[SEAL] WILFORD BURDEAUX,
Notary Public,
Walker County, Texas.

My commission expires June 1, 1957.

91 (*Affidavit of E. H. Boaz, M.D.*)

TEXAS PRISON SYSTEM

Inmate's No.: 139206.
Name: E. H. Boaz.
Unit: Hosp.
Date: 4–5–57.
To: Judge Joe Ingraham.
Relation: none.
RFD, Street or Box No.———.
City: Houston 2.
State: Texas.

To the Person Receiving This Letter:

All inmates mail is opened, censored and recorded by Officials. Inmates may receive not more than three letters a week from any person on their correspondence and visiting lists. These letters must be limited to two pages. You may use one sheet and write on the front and back if you wish. Please address the inmate by name and number. If these rules are not observed the letter will be returned to the sender.

Except at Huntsville inmates are premitted to visit from 9:00–11:00 or from 1:00–3:00 on Sunday. At Huntsville visiting hours are from 1:00–3:00 on Saturday afternoon, 7:30–9:30, 9:30–11:30, and 1:00–3:00 on Sunday. Men in Segregation are permitted to visit on any day of the week other than Saturday or Sunday upon written permission of the Warden of the Segregation Unit. Because of the limited facilities inmates may have a visit every two weeks and not more than two adults may visit at one time.

Any money deposited to the account of an inmate must be sent in the form of a money order or cashier's check to Mr. L. W. Wright, Cashier, Box 32, Huntsville, Texas. Please give the name and number of the inmate to whom the money is to be deposited.

DEAR SIR: Having heard Geo. Lee Parker's case argued pro and con and knowing Mr. Parker's wife was in the hospital at Dumas, Texas, with double pneumonia, and Mr. Parker had no money, I purchased the transcript and statement of facts, and making a loan of it to this Honora'le Court and Geo. Lee Parker hoping this case can be settled according to law and evidence:

I thank you.

E. H. BOAZ, M.D.

94 In The District Court, Moore County, Texas,
69th Judicial District

Caption

THE STATE OF TEXAS,
County of Moore.

Beginning at a March Term of the District Court, begun and holden within and for the County of Moore, at Dumas, Texas, on the 22nd day of March, 1954, and which was still in session on July 26th, 1954, which adjourned on September 18th, 1954 and at a September Term, 1954 begun on September 20th, 1954, and which is still in session and which will adjourn on March 19th, 1955, the Honorable Harry H. Schultz, the Judge Presiding, the following Cause came on for trial:

In the District Court in and for Moore County, Texas

STATE OF TEXAS

v.

GEORGE LEE PARKER

95 [Indictment omitted. Printed side page 5, supra.]

96 [Charge of the Court omitted. Printed side page 23, supra.]

100 [Verdict of the jury omitted. Printed side page 26, supra.]

101 In the District Court, Moore County, Texas

No. 503

THE STATE OF TEXAS

v.

GEORGE LEE PARKER

Defendant's motion for new trial

Filed Nov. 12, 1954

Now comes the defendant, George Lee Parker, in the above entitled and numbered cause, and moves the Court to set aside the verdict and judgment herein rendered against him on the 3rd day of November, A.D. 1954, and grant him a new trial for the following causes, to-wit:

1. Because the verdict is contrary to the law and the evidence in this, that the State failed to prove all the necessary elements of the crime.

2. Because defendant was denied counsel.

GEO. L. PARKER.
Defendant.

Sworn and subscribed to before me, the undersigned authority on this the 12th day of November, A.D. 1954.

[SEAL] HAZEL HAILE,
District Clerk,
Moore County, Texas.

[File endorsement omitted.]

102 [Judgment omitted. Printed side page 6, supra.]

104 [Sentence omitted. Printed side page 8, supra.]

105 In the District Court, Moore County, Texas

No. 503

THE STATE OF TEXAS

v.

GEORGE LEE PARKER

Order overruling motion for new trial

Nov. 12, 1954

This the 12th day of November, A.D. 1954, came on to be heard the motion of defendant, George Lee Parker, to set aside

the verdict and judgment herein rendered, and grant him a new trial of this cause; and the State being present in Court by her County Attorney, and the defendant, George Lee Parker, being present in Court in person and the Court having heard the said motion and the evidence thereon submitted, is of the opinion that the same should be refused. It is therefore considered, ordered and adjudged by the Court that the said motion for a new trial herein, be and the same is refused and in all things over ruled. Whereupon, the defendant, George Lee Parker, in open Court excepted to such judgment and gave notice of appeal to the Court of Criminal Appeals of the State of Texas, sitting in Austin, Texas, which said notice is here now entered of record.

HARRY H. SCHULTZ,
Judge of the 69th Judicial District
in and for Moore County, Texas.

[File endorsement omitted.]

109 [File endorsement omitted.]

111 In the District Court of Moore County, Texas

No. 503

THE STATE OF TEXAS
v.
GEORGE LEE PARKER

Statement of facts

Filed February 5, 1955

Appearances: Mr. A. S. McDonald, Dumas, Texas, for the State. Himself for the Defendant.

Be it remembered That on the 3d day of November 1954, the above entitled and numbered cause came on to be heard before the Honorable Harry H. Schultz, Judge of the District Court of Moore County, Texas, and a jury, and the following proceedings were had.

112 *Colloquy between court and Mr. Parker*

The COURT. I am calling for trial Cause Number 503, styled the State of Texas against George Lee Parker. Is that you?

Mr. PARKER. That is right.

The COURT. You were indicted by a Grand Jury of this county on July 26 of this year, charged with the offense of forgery. Are you ready for trial?

Mr. PARKER. Yes, sir.

The COURT. Do you want a trial by jury or without a jury?

Mr. PARKER. Well, it is immaterial to me, Judge. I don't have any attorney.

The COURT. Well, you are going to have to make up your mind. It is certainly immaterial to the court.

Mr. PARKER. I guess a jury then.

The COURT. You want a trial by jury?

Mr. PARKER. Yes, sir.

The COURT. Do you have a lawyer hired?

Mr. PARKER. No, sir, I don't.

The COURT. The law does not require the court to appoint an attorney to represent a defendant where he has a trial by jury and it is not the practice of this court to appoint any attorney to represent the defendant. It is up to him to arrange for his own counsel. Now, if you are eligible for a sus-
113 pended sentence, why, then, the court would get some lawyer to advise you about the procedure in filing your application for a suspended sentence but only for that part and only if you are eligible for a suspended sentence. If you are not qualified to get a suspended sentence, there would not be any sense in applying for it.

Mr. PARKER. No.

The COURT. If you want to apply for a suspended sentence, you let me know and I will arrange for a lawyer to help you with that part only.

Mr. PARKER. I will not apply for any suspended sentence.

The COURT. All right. I believe you said you were ready for trial.

Mr. PARKER. Yes, sir.

The COURT. Well, the jury will be in at 1:30 this afternoon and we will take your case up further at that time.

(A jury was duly impanelled and sworn.)

The COURT. You may read the indictment.

(Mr. McDonald read the indictment to the jury.)

The COURT. Mr. Parker, how do you plead to the indictment, guilty or not guilty?

Mr. PARKER. Not guilty.

114 ELZY QUATTLEBA[illegible] witness called to the witness stand by Counsel for the State, being duly sworn, testified on his oath, as follows:

Direct examination by Mr. McDONALD:

Q. State your name, please?
A. Elzy Quattlebaum.
Q. Where do you live?
A. Sunray, Texas.
Q. How long have you lived there?
A. Well, a little over nine years.
Q. What is your work?
A. Railroad laborer; section railroad laborer.
Q. Who is Phoebia Quattlebaum?
A. That is my mother.
Q. Where does she live?
A. Down close to Cheyenne, Oklahoma.
Q. What bank does she ordinarily do business with?
A. There at Cheyenne.
Q. The bank at Cheyenne, Oklahoma?
A. Yes, sir.
Q. Is that the Security State Bank?
A. I believe it is.
Q. Mr. Quattlebaum, I hand you State's Exhibit Number One and ask you if you have ever seen that check before?
A. No, sir.

115 Q. You will note that the signature is Phoebia Quattlebaum by Elzy Quattlebaum. Did you sign that check?
A. No, sir; not whatever.
Q. You know G. L. Parker, don't you?
A. I know of him.
Q. Well, he is the defendant sitting here, isn't he?
A. I think so.
Q. Well, as a matter of fact, you know he is, don't you, Mr. Quattlebaum?
A. Yes.
Q. How long have you known him?
A. Well, a long time.
Q. Did you authorize him to sign this check in the manner it is signed?
A. No, sir.
Q. Did you ever authorize him to use your mother's name?

A. No, sir.

Q. Did you ever authorize him to use your name?

A. No, sir.

Q. When did you first find out or how did you find out about this check being written on your mother's account; tell the jury about it?

A. When I first found out there was a check writing going on?

Q. Yes, sir. There was more than one check of this
116 kind written on your mother's account, wasn't there?

A. Yes, sir.

Q. Tell the jury how you found out about it?

A. I went down home one time—I can't remember the date—down to see my mother and so my sister's boy was up at my mother's and he seen those checks that was sent out there to her and so he got those checks and kept them until I come down there and turned them over to me and I went to the bank and seen about it.

Q. Well, about how many checks or about what amount of money was drawn on your mother's account by checks similar to this?

A. I don't know just how many—how much the whole total was but I got six checks down there; those that they had at the house and three there at the bank was give on us.

Q. Did your mother tell you that she authorized him to write checks on her?

A. No, sir.

Q. Well, the check was paid by the bank down there, was it not?

A. Yes, sir.

Q. Do you know whether your mother has ever gotten her money back on those checks?

A. No, sir, she ain't.

Q. I will hand you six checks here and ask you to look at those and see if those are the checks you are referring
117 to when you mentioned a moment ago that there were six or seven checks?

A. Yes, sir. I believe that is right.

Offers in evidence

Mr. McDonald. The State will introduce into evidence State's Exhibits Numbers one through seven, inclusive.

STATE'S EXHIBIT NUMBER ONE

CHEYENNE, OKLA. 4-16 1954 No. 3

(RUBBER STAMP) 2

SECURITY STATE BANK
CHEYENNE, OKLA.

88-1034
1113

PAY TO THE ORDER OF G. L. Parker $38.00
Thirty Eight no 100 DOLLARS

(s) PHOEBIA QUATTLEBAUM X
BY ELZY QUATTLEBAUM

(INDORSEMENT ON BACK OF CHECK IS AS FOLLOWS:)

(s) G. L. PARKER

STATE'S EXHIBIT NUMBER TWO

CHEYENNE, OKLA. May 10 1954 No. ---

(RUBBER STAMP) 1

SECURITY STATE BANK

88-1034
1113

PAY TO THE ORDER OF G. L. Parker $55.00
Fifty Five no 100 DOLLARS

118

(s) PHOEBIA QUATTLEBAUM X
By ELZIE QUATTLEBAUM

(Indorsement on back of check is as follows:)

G. L. Parker

STATE'S EXHIBIT NUMBER THREE

CHEYENNE, OKLAHOMA May 1st 1955 No. ——

SECURITY STATE BANK

(RUBBER STAMP:) 88–1034
1113

(Cecil)
Pay to the Order of G. L. Parker $26.00
TWENTY SIX & No 100 ..... DOLLARS

(s) PHOEBIA QUATTLEBAUM x
By ELZIE QUATTLEBAUM

(Indorsement on back of check is as follows:)

G. L. Parker

STATE'S EXHIBIT NUMBER FOUR

CHEYENNE, OKLA. March 20 1954 No. ——

SECURITY STATE BANK

88–1034
1113

Pay to the Order of G. L. Parker $45.00
Forty Five ..... DOLLARS

(s) PHOEBIA QUATTLEBAUM x
By ELZIE QUATTLEBAUM

(INDORSEMENT ON BACK OF CHECK IS AS FOLLOWS:)

119 G L Parker

STATE'S EXHIBIT NUMBER FIVE

CHEYENNE, OKLA 4-5 1954 No. ——

SECURITY STATE BANK

(RUBBER STAMP:) 88-2272

3 1113

Pay to the Order of G. L. Parker $34.65
Thirty Four and 65 100 DOLLARS
For Suplys 91-0064

(s) PHOEBIA QUATTLEBAUM x
By ELZIE QUATTLEBAUM

(INDORSEMENT ON BACK OF CHECK IS AS FOLLOWS:)

G L Parker

Box 558

Sunray Tex

STATE'S EXHIBIT NUMBER SIX

CHEYENNE, OKLA April 26 1954 No. ——

SECURITY STATE BANK

88-1034

1113

Pay to the Order of G. L. PARKER $28.50
TWENTY EIGHT AND 50 100 ..... DOLLARS

(s) PHOEBIA QUATTLEBAUM x
By ELZIE QUATTLEBAUM

(INDORSEMENT ON BACK OF CHECK IS AS FOLLOWS:)

G. L. Parker

120 *STATE'S EXHIBIT NUMBER SEVEN*

CHEYENNE, OKLA., May 3 1954 No. ——

SECURITY STATE BANK

(RUBBER STAMP:) 88-2272

3 1113

Pay to the Order of G L Parker $25.00

Twenty five and no 100 DOLLARS

For A lonar

(s) PHOEBIA QUATTLEBAUM X
by ELZIE QUATTLEBAUM

(INDORSEMENT ON BACK OF CHECK IS AS FOLLOWS:)

G. L. Parker

By Mr. MCDONALD:

Q. Now, Mr. Quattlebaum, did you authorize George Parker to sign any of these checks that you have looked at?

A. No, sir; I did not.

Q. They are in his handwriting, aren't they—those that are written out?

A. I reckon they are; they sure ain't in mine.

Q. Did you ever talk to him about these checks?

A. No, sir, never did.

Q. Do you know where they were given?

A. No, not unless they was give over here at the bank.

Q. If I understand it correctly, these checks went on down to your mother's bank and they were taken out of her account?

121 A. That is right.

Q. Through error by the bank?

A. That is right.

Q. They didn't detect the forgery?

A. No, sir.

Q. And, it was after you made your trip down there that you were advised about these checks coming in and they asked you if you had given them. Is that what happened?

A. Yes, sir.

Q. And, they show your mother's signature there by you or with the letter "B" indicating by Elzie Quattlebaum; you didn't sign any of those, did you?

A. No, sir, I sure did not.

Q. And, you didn't authorize anyone to use that signature?

A. No, sir.

Q. And, your mother didn't authorize anyone to use that signature?

A. No, sir.

Q. Did you talk with anyone in this bank about the checks?

A. No, sir.

Mr. McDONALD. I believe that is all unless Mr. Parker has some questions.

Mr. PARKER. I don't want to question him.

(Witness excused.)

122 CECIL BAER, a witness called to the witness stand by Counsel for the State, being duly sworn, testified on his oath, as follows:

Direct examination by Mr. McDONALD:

Q. State your name, please?

A. Cecil Baer.

Q. You are connected with the First State Bank of Dumas, are you not?

A. Yes, sir.

Q. What is your capacity at the bank?

A. Vice-President.

Q. About how long have you been working in that bank, Mr. Baer?

A. Nearly twenty one years.

Q. Do you know the defendant in this case, George Lee Parker?

A. Yes.

Q. That is him sitting here?

A. Yes.

Q. Have you had occasion, Mr. Baer, in connection with your work in the First State Bank in Dumas to do any business with him or know of any business he had down there?

A. Yes, sir. He had a deposit account with us for awhile.

Q. To save time, could you turn to the jury and tell them something of that account; whether the checks he deposited

particularly in connection with those drawn on the bank
123. in Oklahoma; purported to be signed by Phoebia Quattlebaum by Elzie Quattlebaum?

A. I don't know just how you mean by that—as to how they were deposited or——

Q. I call your attention to State's Exhibit Number One which is a check and ask you if you have any knowledge or recollections of having seen that check before?

A. Not this particular check as far as I know; no, sir. It did go through our bank all right.

Q. To whose credit was it deposited?

A. To G. L. Parker.

Q. Whose signature is that on the back?

A. That don't look too much like some of the signatures of his that I have seen. All of these did go through our bank all right; whether or not I ever saw any of these particular checks, I don't know. There is two others that I have had in my possession and examined but neither of those two that I mentioned had been cancelled by the bank that they were drawn on.

Q. Tell us about those checks, since you mentioned it, if you will?

A. They were deposited with our bank; part of them, he may have drawn some of the cash on at the time they were deposited. Of those that were deposited, within the next few days were
almost totally drawn out. At the time we got the first
124 check back from this Cheyenne bank stating that the signature was irregular, why, there was still another one that had been deposited to his account, on the road to that bank, and it later came back. Also, we did get two back that had of almost like these or was drawn the same way that were not paid by the bank that they were drawn on in Cheyenne.

Q. In other words, I believe there are seven checks there that cleared through the bank at Cheyenne and there were two checks similarly drawn and signed that the bank returned to your bank because the signature was irregular?

A. That is right.

Q. Although it was the same signature as those checks that you have there?

A. Yes.

Q. Which indicates, I take it, that those particular checks had slipped by the bank in Cheyenne and hadn't been detected

until it was called to their attention that those were irregular?

A. Yes, sir.

Q. Mr. Baer, in your work in the bank for approximately twenty one years, of course, you have examined and seen lots of handwriting, haven't you?

A. Yes.

Q. I will ask you, based on your experience there, if in your opinion the same party wrote those particular checks there—that is, those that are written out—as the party who indorsed them, G. L. Parker?

A. That would be hard to say; the writing on the indorsement being a different name, that is a pretty difficult question.

Q. Well, those checks were all desposited by G. L. Parker in your bank, were they not?

A. I couldn't say that they were. I think all of them were deposited to his account. Whether or not Mr. Parker brought them in, I don't know. I didn't wait on him at the time. I would see him in there and knew he was carrying an account but this is probably the first time I have seen any of these checks.

Q. Would the stamp indicate the Teller that accepted the check or did business with him?

A. Yes. It should. That has Teller No. One, which would be the Head Teller. The next one doesn't seem to have a teller stamp on it; and, this is Number Two, which would be the second window on the right hand side after you enter the lobby. This is Number 3 and Number 3 and back to Number 1 and this one doesn't have any. I notice this first one, dated May 1st, '55, has Teller Number 1 and has my name written in that. I didn't wait on him; evidently, they asked me if he had an account which, at that time, he had had an account for approximately thirty five or forty days. If that was the way it happened, I told him that he had had an account; what that Cecil means or when it was put on there, I don't know. It isn't in my writing.

Q. You do know that the money was almost immediately withdrawn after the checks were deposited each time?

A. Within a very short time; yes.

Mr. McDonald. I believe that is all.

Mr. Parker. No questions.

(Witness excused.)

JOHN EASLEY, a witness called to the witness stand by Counsel for the State, being duly sworn, testified on his oath, as follows:

Direct examination by Mr. McDONALD:

Q. Your name is John Easley and you are the Sheriff of Moore County, Texas?

A. Yes, sir.

Mr. Easley, do you know the defendant in this case, Mr. George Lee Parker?

A. Yes, sir.

Q. And, you have had him in custody part of the time, have you not?

A. Yes, sir.

Q. And, he has been out on bond part of the time?

127 A. He was out on bond for awhile.

Q. This defendant, George Lee Parker, and G. L. Parker is one and the same person, isn't he?

A. Yes, sir.

Q. And, did Mr. Parker ever admit to you that he wrote these checks?

A. Yes, sir, he has admitted to me that he wrote them.

Q. Never been any question about him writing them, as far as him telling you about it?

A. Yes, sir; he told me two times that he did write the checks.

Q. And, by the checks, you are referring to this check that he was indicted on particularly, State's Exhibit Number One, in connection with some other checks?

A. Of course, he didn't say what checks—what I mean, call the names or the amounts or amounts of them, but, he did write the checks on Elzy Quattlebaum.

Q. You are talking about the ones that you have in the file?

A. Yes, sir.

Q. Which is this group of checks?

A. Yes, sir.

Q. Mr. Parker has been in ill health, somewhat, hasn't he?

A. Yes, sir, he has been in very ill health. I have had to buy him medicine and had to take him up and give him shots. I believe the doctor says he has heart trouble.

128 Q. I believe after he was out on bond—originally, after he was indicted, didn't you have another check or two come in on him?

A. Yes, sir. We had some small checks.

Q. That was while he was out on bond?

A. I couldn't say that was given while he was out on bond or whether it was before. I don't remember the dates on it.

Mr. McDONALD. I believe that is all.

Mr. PARKER. No questions.

MARGARET ANN CASTLE, a witness, called the witness stand by Counsel for the State, being duly sworn, testified on her oath, as follows:

Direct examination by Mr. McDONALD:

Q. State your name, please?

A. Margaret Ann Castle.

Q. Where do you work?

A. First State Bank, Dumas.

Q. You have been there for approximately how long?

A. Four years.

Q. In connection with your work at the First State Bank, have you had occasion during this year to have dealing with the defendant, Mr. George Lee Parker, who is seated here?

A. Yes, sir.

Q. If you will please ma'am, I would like to ask you
129 to turn through those checks and tell us which ones in particular you handled?

A. I am sure of the one in March and both of these in April.

Q. Let's separate the ones that you are sure about?

A. These three.

Q. In other words, State's Exhibits Numbers One, Six and Four, for the purpose of identification, are the three that you know that you handled?

A. Yes, sir.

Q. Tell the jury what dealing you had with Mr. Parker in connection with those checks, if you would, please ma'am?

A. Well, the first one I handled—he had opened a checking account and he deposited the biggest part of it. I think he got some cash on part of it—to start his account.

Q. You handled the opening of the account?

A. Yes, sir; checking account.

Q. And, possibly, the earliest date there is the one he deposited first?

A. I think so; yes, sir.

Q. Did he deposit those three checks you have identified particularly—he deposited those himself with you?

A. Yes. He took cash on a portion of the deposit but he did deposit the biggest part of it.

Q. He did that in person?

130 A. Yes, sir.

Q. Did you see him indorse the check?

A. Yes, sir.

Q. And, that is the signature on the reverse of those—would you examine the reverse of those, please ma'am?

A. Yes, sir.

Q. Is it not true that after he deposited any amount in the account that he almost immediately withdrew it by writing other checks on his account?

A. Yes, sir.

Q. Did you have anything to do with him in connection with a check being returned?

A. Yes, sir; one was returned.

Q. Tell us about that.

A. It was returned for signature being irregular and I contacted Mr. Parker and I asked him to come in to see about it and he came in soon after I had written the letter or the note and he said that he had contacted this person and she had told him to write another check.

Q. Wait a minute. By this person, I take it you mean this Phoebia Quattlebaum?

A. Yes, sir.

Q. Was that check the same type check—that is, the same signature that you are looking at?

A. Yes, sir.

131 Q. That is, it was written on Phoebia Quattlebaum by Elzy Quattlebaum?

A. Yes, sir.

Q. And when he said he had contacted this person, he was referring to Phoebia Quattlebaum?

A. That is right.

Q. And, tell the jury what he said in connection with what Phoebia said?

A. He said he had contacted Mrs. Quattlebaum and also the bank and he told me he would come in the next day and bring me another check to replace this one.

Q. Did he?

A. No, sir.

Q. Then, so far as you know, those two checks that were returned—where are they, do you know?

A. Well, I don't know. One was charged off. We were left holding it and that was left in our records.

Q. I will call your attention to State's Exhibit Number One and ask you about the date that that was deposited in the First State Bank or when it was paid?

A. Paid by us or deposited by us?

Q. Yes, ma'am?

A. Well, it must have been about the same time as the date on this check.

Q. Would it be on or about the 16th of April, 1954?

132 A. Yes, sir.

Q. And, this transaction occurred in Moore County, Texas, did it not?

A. Yes, sir.

Mr. McDonald. I believe that is all unless Mr. Parker has a question.

Mr. Parker. No questions.

(Witness excused.)

Mr. McDonald. State will rest, Your Honor.

The Court. The state has rested its case. You may proceed with your side of the case at this time.

Mr. Parker. I want Ted Kane on the stand.

Ted Kane, a witness called to the witness stand by Defendant, being duly sworn, testified on his oath, as follows:

Direct examination by Mr. Parker:

Q. Ted, you go ahead and tell the court about my condition and how you have known me—tell the jury?

A. Well, do I understand it right?

Q. Huh?

A. You mean your physical condition, so forth and so on?

Q. Yes. Just go ahead and tell the jury about what you know?

A. Well, his physical condition, according to everything, is bad or, at least, the doctors say so, you know. I couldn't

133 —as far as the checks, I don't know; but, I do know that he needs medical care. Is that what you meant, George?

Q. Yes, I guess so; just go ahead and tell them what you know about me. That is all—only—that is all I want to ask—I am just leaving mine up to them, you know?

The COURT. Do you know what he is driving at—what he wants?

A. Well, if I understood it, the condition, you know——

The COURT. That is up to you too.

Mr. MCDONALD. You got anything else?

Mr. PARKER. No. Go ahead and ask him.

Cross-examination by Mr. MCDONALD:

Q. You might give us your full name?

A. Ted Kane.

Q. How long have you known Mr. Parker?

Approximately three years, I guess. He came back here—his wife worked for us at the time and that is where I got to knowing him.

Mr. MCDONALD. I believe that is all.

(Witness excused.)

L. W. JAMES, a witness called to the witness stand by the Defendant, being duly sworn, testified on his oath, as follows:

134 Direct examination by Mr. Parker:

Q. You go ahead and tell them about what you know about me, physically and everything else?

A. Well——

Q. Just tell the jury?

A. I have knew Mr. Parker about right close to two years and it is—I have lived neighbors to him; but, I have never transacted no business with him. I don't know; I think he is okay as far as I know.

Mr. PARKER. That is all.

Cross-examination by Mr. MCDONALD:

Q. What is your name?

A. James—L. W. James.

Q. You know anything about Mr. Parker while he lived in Oklahoma?

A. No, sir. I do not. I just knew him since I have lived in Sunray.

Q. As far as you knew, he was okay?

A. That is right.

Mr. McDONALD. That is all.
(Witness excused.)

JOHN H. WORST, a witness called to the witness stand by the defendant, being duly sworn, testified on his oath, as follows:

135 Direct examination by Mr. PARKER:

Q. Johnny, you go ahead and tell them—I have worked for you a lot—the condition I have been in and all; just tell the jury in your own way?

A. Mr. Parker asked me to go to work for the County, last summer a year ago, out at the swimming pool and the park and I put him on out there and he made a good hand but he is ill with heart trouble, I believe. He was regular; he really put in more hours—well, than was requested of him. In other words, he worked eight or ten hours a day a lot of times and wouldn't get but eight hours' pay; but, outside of that, I don't know anything about him at all. I know he is ill.

Cross-examination by Mr. McDONALD:

Q. For the record, give the Reporter your name?
A. John H. Worst.
Q. Do you know anything about his trouble with checks?
A. No, sir.
Q. Any of that come to your attention?
A. No, sir.
Mr. McDONALD. That is all.
(Witness excused.)

136 J. O. VERNON, a witness called to the witness stand by the defendant, being duly sworn, testified on his oath, as follows:

Direct examination by Mr. PARKER:

Q. Go ahead, Mr. Vernon, and tell the jury what you know about me and my experience working with you?

A. I am a teacher over in the Sunray schools and I had gotten acquainted with Mr. Parker largely through some of his grandchildren, who are in our school and I have had two or three of the grandchildren in my class and, naturally, I would know who their parents were and who their grandparents were, and then last summer and the summer before last, after school was out, I was in charge of the Sunray Swimming Pool and Mr. Parker was employed by the County, or the County Com-

missioners who operate the swimming pool, to water the grass and keep the grass mowed and that was the first time or that is about when I got acquainted with Mr. Parker and that covered—about two years ago—when I first met Mr. Parker and I have known him then about two years.

Q. Did you all get along with me and find my work all right?

A. Yes, sir. I found Mr. Parker's work satisfactory in every way and very cooperative; very good workman for our work that we had there.

Mr. PARKER. That is all I want.

137 Cross-examination by Mr. McDONALD:

Q. Give us your full name?

A. J. O. Vernon.

Mr. McDONALD. That is all, Mr. Vernon.

CARL HAMMER, a witness called to the witness stand by the defendant, being duly sworn, testified on his oath, as follows:

Direct examination by Mr. PARKER:

Q. Just tell the jury, Paul, what you know about me?

A. Well, I don't know—you know—much about the old man only, you know, his health. I do know that he don't have any health, I carried him to the doctor once and, that way, I learned, you know, that he was in bad health; but, as far as the checks, I wouldn't know a thing in the world about them; and, I have knew him, I believe, around two years. I got acquainted with him about two years ago but, outside of that, that is about all I know about anything about it. I carried him to Liberal to the doctor one time and he was in pretty bad shape but, outside of that, why, I wouldn't know anything about the checks. That is all I know.

Mr. PARKER. That is all.

Cross-examination by Mr. McDONALD:

138 Q. What is your name?

A. Carl O. Hammer.

Q. I believe you said you had known him about ten years?

A. Two years.

Q. In effect, you were telling the jury as far as you know his reputation is good?

A. For the past two years; yes, sir.

Mr. McDONALD. That is all.

(Witness excused.)

THOMAS W. JAMES, a witness called to the witness stand by the defendant, being duly sworn, testified on his oath, as follows:

Direct examination by Mr. PARKER:

Q. Just tell the jury what you know about me?

A. Well, I have knew Mr. Parker approximately two years and, as far as having any business transactions with him, I never had any transactions with him. I lived right close—pretty close—to him at all times some time—about a half-block from him—and about all I know about him is that the old fellow has heart trouble. I have saw him work. We worked at the swimming pool. He was sick and I knew he was sick and barely getting around and as far as me knowing him violating the law, I never did know it. It wasn't any of my
139 business. I didn't try to inquire into it and, as far as I know, his reputation was as good as anybody's was around close to me.

Mr. PARKER. That is all.

Cross-examination by Mr. MCDONALD:

Q. What is your name?

A. Thomas W. James.

Q. I believe you said as far as you know, his reputation is good?

A. Yes, sir.

Mr. MCDONALD. That is all, Mr. James.

(Witness excused.)

EVERETT TOOMEY, a witness called to the witness stand by the defendant, being duly sworn, testified on his oath, as follows:

Direct examination by Mr. PARKER:

Q. Just tell the jury what you know about me and about my health?

A. I have known Mr. Parker for a little over a year. I have visited with him a number of times and, in my opinion, he has always been a gentleman in my presence. In fact, he lived right next door and moved; and, shortly after that, he became ill and I saw very little of him. That is about all I can tell.

140 Mr. PARKER. Ask him anything you want.

Cross-examination by Mr. McDONALD:

Q. Your name is Everett Toomey?

A. Yes, sir.

Q. You live in Sunray?

A. Yes, sir.

Q. You have had some bad checks from Mr. Parker yourself, haven't you?

A. Yes, sir.

Q. Still have some on him?

A. Yes, sir.

Q. Were those written on his own name or someone else's name?

A. In his name.

Q. Just hot checks he had given you?

A. Yes, sir.

Mr. McDONALD. I believe that is all.

(Witness excused.)

Mr. PARKER. That is all of them, I think.

The COURT. Are you through?

Mr. PARKER: Judge, here are some letters I would like for the jury to see.

The COURT. We can't give the letters to the jury.

Mr. PARKER. For—from the doctors?

141 The COURT. No, sir.

Mr. PARKER. That is all.

JOHN EASLEY, a witness recalled to the witness stand by Counsel for the State, in rebuttal, being previously sworn, testified further as follows:

Direct examination by Mr. McDONALD:

Q. You are the same John Easley that testified a few minutes ago?

A. Yes, sir.

Q. Mr. Easley, I will ask you whether or not there is at this time another indictment pending against this defendant, George Lee Parker?

A. Yes, sir, there is.

Q. And, that is another forgery case?

A. Yes, sir.

Q. Mr. Easley, I will ask you whether or not you have received the record from the FBI on Mr. Parker?

A. Yes, sir, I have.

Q. Do you have it there in your hand?

A. Yes, sir, I have it here.

Q. I will ask you to refer to it to refresh your memory and tell us how many times that indicates he has been in the penitentiary in connection with forged checks or fictitious checks?

142 A. I believe seven times he has been in the penitentiary for bogus and forged checks.

Q. That was in what state?

A. Arkansas and Oklahoma, I believe, and also——

Q. And, I think you said seven times. Would you refer to that again and tell us how many times he has been in the penitentiary regardless of the cause?

A. Nine times. The first time he went was 1922 for removal of mortgaged property and then there was one other time there. It is either eight or nine times—I believe it is nine altogether and one of those was for disposing of mortgaged property in 1922.

Q. What was the last time he was sentenced to the penitentiary?

A. 1948—the 8th month and 29th day.

Q. What was that charge?

A. Forgery.

Q. And, where was he sent?

A. He was sent to Jefferson City, Missouri and got two years and I believe was paroled after serving some time.

Q. And, that is approximately when he came to this county. Is that right?

A. I don't know when Mr. Parker came to this county.

Q. Are there any other miscellaneous offenses other
143 than those that you have mentioned—I don't care that you mention them?

A. Yes, sir. There has been a drunk charge, I believe, against George one time.

Mr. McDONALD. I believe that is all.

Cross-examination by Mr. PARKER:

Q. Could I see that report, Mr. Easley; you said nine times, didn't you?

A. Either eight or nine times.

Q. Look at that again, Mr. Easley?

A. Eight times is what it shows here that he has.

Q. There are some cases there on that record that it doesn't show what was done?

A. Yes, sir. There are some of those that doesn't show disposition.

Q. They are just on the record but it don't show how they are disposed of—whatever?

A. No, sir.

Mr. PARKER. That is all.

Redirect examination by Mr. McDONALD:

Q. I will ask you whether or not there is any case that he was ever sentenced or tried in Texas on any offense?

A. No, sir. I don't believe he has ever been tried in Texas.

144 Q. The penitentiaries he has been in being Oklahoma, Missouri and what other State, if any?

A. Arkansas.

Q. Those three States are all?

A. Yes, sir, that is all.

Mr. McDONALD. That is all.

Mr. PARKER. That is all.

(Witness excused.)

Mr. McDONALD. State will close.

The COURT. Are you through?

Mr. PARKER. I am through.

The COURT. Gentlemen of the Jury, I am reminding you of the instructions given you earlier. They still apply. It will take awhile to get a charge written and we hope to have it ready as soon as possible.

145 *Agreement of counsel*

We, the undersigned attorneys for the state and the defendant, in the above entitled and numbered cause, wherein George Lee Parker is defendant, tried in the District Court of Moore County, Texas, hereby agree that the foregoing pages numbered 2 to 34, inclusive, constitute a full, true and correct transcript of the oral and documentary evidence adduced upon the trial of the case, referred to in the Court Reporter's certificate; that the statements contained in said Court Reporter's Certificate are true and correct; that the Court may approve said statement of facts and order the Clerk of the District Court of Moore County, Texas, at Dumas, Texas, to file the said statement of facts as a part of the record in said cause.

Witness our hands, for the parties hereto, this the ..... day of ..... A.D., 1955.

_____,
Attorney for the State.

_____,
Attorney for the Defendant.

146 [Double certificate to foregoing transcript omitted in printing.]

147 In the United States District Court, Southern District of Texas, Houston Division

Civil Action No. 9783

IN THE MATTER OF PETITION OF GEORGE LEE PARKER FOR THE WRIT OF HABEAS CORPUS

Memorandum and Order

June 24, 1957

Upon the motion of Petitioner, George Lee Parker, his petition for writ of habeas corpus has been reconsidered.

Upon reconsideration I believe the petition to be without merit and decline to either grant the Writ of Habeas Corpus or enter an Order to Show Cause.

The clerk will record this Memorandum and Order on the minutes of the court and will forward true copies to the Attorney General of Texas and to the Petitioner. This Order is and constitutes a Final Judgment herein.

Done at Houston, Texas, this, June 24, 1957.

JOE INGRAHAM,
United States District Judge.

[File endorsement omitted.]

149 [Minute entry of argument and submission—April 24, 1958 (omitted in printing).]

150 In the United States Court of Appeals for the Fifth Circuit

No. 17047

GEORGE LEE PARKER, APPELLANT

v.

O. B. ELLIS, GENERAL MANAGER, TEXAS PRISON SYSTEM, APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS

Opinion

August 29, 1958

Before HUTCHESON, Chief Judge, and RIVES and CAMERON, Circuit Judges

CAMERON, Circuit Judge: This appeal presents the question whether the court below committed error in declining to issue writ of habeas corpus[1] based upon appellant Parker's application claiming that he was denied due process of law under the Fourteenth Amendment in that he was tried before a Texas State Court when he was not represented by counsel, was sick and unable to defend himself, and the evidence was insufficient to support his conviction of the crime of forgery.

151 The trial court issued an order to appellee Ellis, General Manager, Texas Prison System, to show cause why the writ should not be granted and to bring before the court the proceedings upon which the judgment of the State Court had been rendered.

In response to this order appellee brought before the court below copies of the indictment, capias, charge of the court, verdict, judgment, sentence and mandate, along with the docket entries of the District Court of the Sixty-ninth Judicial District, Moore County, Texas, attaching also the prison and criminal record of appellant. He drew the court's attention to the fact that appellant had appealed from the judgment of conviction and that said judgment had been affirmed by the

[1] 28 USCA § 2241 et seq.

Court of Criminal Appeals of Texas. Appellee also exhibited with his return certificate of the trial judge,[2] and attached copies of proceedings in petition for habeas corpus which appellant had filed in a Texas State Court and the order there entered.

The court below ordered that the application for writ of habeas corpus be heard upon affidavits, (cf. 28 U.S.C.A. § 2246) and it was heard upon the application and the various other documents filed by appellant in his own behalf upon the return of the appellee and upon a transcript of the proceedings at the trial, which had been obtained by appellant through the assistance of a firm of lawyers and a doctor.

152 The facts presented to the court below were without dispute on any material point, and may be summarized as follows:

Appellant Parker, age sixty-six, was indicted by the Grand Jury of Moore County, Texas, for forging the name of Elzie Quattlebaum and Phoebia Quattlebaum on seven checks. On November 3, 1954, the case came on for hearing, and he stated that he was ready for trial and desired to be tried by Jury.

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[1] 28 USCA § 2245.

[2] The following colloquy took place at the outset of the trial:

"The Court. I am calling for trial Cause No. 503, styled The State of Texas v. George Lee Parker. Is that you?

Mr. Parker. That is right.

The Court. You were indicted by a Grand Jury of this county on July 26th of this year, charged with the offense of forgery. Are you ready for trial?

Mr. Parker. Yes, sir.

The Court. Do you want a trial by jury or without a jury?

Mr. Parker. Well, it is immaterial to me, judge. I don't have any attorney.

The Court. Well, you are going to have to make up your mind. It is certainly immaterial to the court.

Mr. Parker. I guess a jury then.

The Court. You want a trial by jury?

Mr. Parker. Yes, sir.

The Court. Do you have a lawyer hired?

Mr. Parker. No, sir, I don't.

The Court. The law does not require the Court to appoint an attorney to represent a defendant where he has a trial by jury and it is not the practice of this Court to appoint any attorney to represent the defendant. It is up to him to arrange for his own counsel. Now, if you are eligible for a suspended sentence, why, then, the Court would get some lawyer to advise you about the procedure in filing your application for a suspended sen-

153 The State offered the testimony of Elzie Quattlebaum that he did not recognize the checks drawn on the account of Phoebia Quattlebaum, that he did not sign his name to any of the checks, that he knew and recognized the defendant, but did not authorize the defendant to sign his name to the checks in any manner, nor did his mother Phoebia. The Vice-President of the First State Bank of Dumas, Texas, testified that the appellant opened an account with that bank and that the checks in question were deposited to this account. A teller in the same bank testified that the appellant, with her assistance, opened the account with the bank by depositing three of the checks in question with her and that she saw the appellant endorse the checks for deposit. Sheriff John Easley testified that the accused admitted to him that he wrote the checks in question.

Parker did not take the witness stand, but called seven witnesses who testified to his good character. Sheriff Easley testified in rebuttal without objection that he had evidence of seven prior convictions for forgery, as shown by a F.B.I. report in the sheriff's office. The jury returned a verdict of guilty and fixed the punishment at seven years in the State Penitentiary. The court's judgment was entered accordingly, but the sentence ordered incarceration for not less than two nor more than seven years. March 23, 1955, the Court of Crim-
154 inal Appeals affirmed the judgment of the State District Court.[1]

August 29, 1955, appellant made application to the Criminal Court of Appeals of Texas for a writ of habeas corpus where, for the first time, he raised the issue that he was denied representation by counsel and that he was ill at the time of the

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tence but only for that part and only if you are eligible for a suspended sentence. If you are not qualified to get a suspended sentence, there would not be any sense in applying for it.

Mr. PARKER. No.

The COURT. If you want to apply for a suspended sentence, you let me know and I will arrange for a lawyer to help you with that part only.

Mr. PARKER. I will not apply for any suspended sentence.

The COURT. All right. I believe you said you were ready for trial.

Mr. PARKER. Yes, sir.

• • • • • •

The COURT. Mr. Parker, how do you plead to the indictment, guilty or not guilty?

Mr. PARKER. Not guilty."

[1] Parker v. State, 276 SW 2d 533.

trial.[5] His petition set forth at length that he was wrongfully convicted of forgery, admitting, however, that he was guilty of the offense of passing a forged instrument.[6] The application for habeas corpus was denied by the State Court and application for certiorari was denied by the United States Supreme Court, 350 U.S. 971.

In his appeal from the order of the court below denying issuance of the writ of habeas corpus,[7] appellant
155 relies on two points: "because of petitioner's physical condition, continuance of the case was requested which was promptly denied by the trial court;" and that petitioner "then asked the trial judge to appoint an attorney to defend him as he was without funds to employ a lawyer;" it being contended that both of these actions taken by the Texas trial court were in violation of appellant's constitutional rights. He does not argue in his brief the point stressed in his motion for a new trial and in the various proceedings conducted by him in the Texas Courts, that the verdict was contrary to the evidence. This last point will not be considered further, therefore, because it is palpably without merit and because it has been abandoned.

Nor is there any show of merit in appellant's claim based upon his physical condition. As far as we can tell from this long and confused record, appellant never made the contention, until his brief before this Court, that he requested a continuance of the case because of his physical condition. In all other instances he had been content merely to stress the fact

[5] "Petitioner would further show that prior to, at the time of, and at present, he was under care of doctors, and was under constant strain, therefore his physical and mental condition was such that it would be impossible for him to intelligently defend himself, even if he were versed in the intricate operations of the law. He was denied his right of appeal since he did not know the proper procedure of entering an appeal * * *."

[6] "Petitioner should not have been tried for the offense of forgery. The offense of passing a forged instrument would have been proper, and petitioner would have pled guilty to a charge of that nature. Forgery and the passing of a forged instrument are two separate, individual charges with different penalties, therefore where petitioner was tried on one, (forgery) and evidence all points to the effect that he was not guilty of forgery and no mention is made in the indictment of the charge of passing a forged instrument, petitioner was tried without due process of law, and it constitutes a reversible error."

[7] The court below declined also to issue a certificate of probable cause but, after the record was filed in this Court, the panel of judges then sitting granted, on December 11, 1957, such a certificate.

that his health was bad. The transcript of the trial proceedings does not show that appellant ever advised the court before whom he was being tried that he was physically incapacitated, or that he ever asked any continuance or any other relief based thereon. He did place on the stand several lay witnesses for whom he had worked. Some said that he was ill at times, others that he showed no sign of illness. All of them testified that he always put in a full day's work when he was working for them.

156 The state judge who tried appellant certified that he seemed in full possession of his faculties, and that, otherwise, he would not have proceeded with the trial.[8]

In his brief before us on the contention that the failure of the court to furnish him an attorney violated his constitutional rights, appellant claims that he requested the appointment of an attorney. An examination of the record fails to reveal that such a contention was made in the various other pleadings, arguments and statements made before the Texas Courts. The record of the trial, pertinent portions of which are copied in footnote 3, supra, does not disclose any request by appellant that counsel be appointed to represent him.

The question, therefore, comes down to whether the State of Texas was bound, under the Fourteenth Amendment, to provide a lawyer to represent appellant in his trial before the jury. The State of Texas furnishes legal representation only to those charged with capital offenses.[9] That Texas is not alone in its practice is shown in the decision of the

157 Supreme Court of the United States in Betts v. Brady, 1942, 316 U.S. 455, 469. In that case the Supreme Court discussed at length whether every person charged with a criminal offense in a state court is entitled to legal repre-

[8] These are the words of the judge's certificate, cf. 28 U.S.C.A. § 2245:

"It is my opinion that throughout the trial the defendant was in full possession of his mental faculties and well understood all of the proceedings and I did not discern any indication of any physical ailment that might have handicapped him in any way. If I had observed any evidence indicating that the defendant was handicapped either mentally or physically, the case would not have been tried at that time, irrespective of any request for postponement by the defendant."

[9] Article 494, Vernon's Code of Criminal Procedure of Texas; Holton v. State, 158 S.W. 2d 722, certiorari denied 316 U.S. 703; Ex parte Hope, 228 S.W. 2d 171.

sentation, and answered the question in the negative. Its conclusion is epitomized in these words: [10]

"This material demonstrates that, in the great majority of the States, it has been the considered judgment of the people, their representatives and their courts, that appointment of counsel is not a fundamental right, essential to a fair trial. On the contrary, the matter has generally been deemed one of legislative policy. In the light of this evidence, we are unable to say that the concept of due process incorporated in the Fourteenth Amendment obligates the States, whatever may be their own views, to furnish counsel in every such case. Every court has power, if it deems proper, to appoint counsel where that course seems to be required in the interest of fairness."

The concluding paragraph of the opinion (p. 473) reads thus:

"As we have said, the Fourteenth Amendment prohibits the conviction and incarceration of one whose trial is offensive to the common and fundamental ideas of fairness and right, and while want of counsel in a particular case may result in a conviction lacking in such fundamental fairness, we cannot say that the Amendment embodies an inexorable command that no trial for any offense, or in any court, can be
158 fairly conducted and justice accorded a defendant who is not represented by counsel."

The rule of Betts v. Brady was recently considered by the Supreme Court in the light of its subsequent decisions, and the majority of the court adhered to the idea that the concept of due process was "less rigid and more fluid than those envisaged in other specific and particular provisions of the Bill of Rights;" and that, in a State Court trial, the absence of legal representation is not fatal to a conviction unless the trial was lacking in "that fundamental fairness essential to the very concept of justice." See Crooker v. California, 1958, 26 LW 4504, 4506, and Cicenia v. LaGay, 1958, 26 LW 4501 and cf. No. 17014, Gray v. Ellis, General Manager, Etc., 5 Cir., June 3, 1958, * * * F.2d * * *.

A careful examination of the record of appellant's trial and of all of the proceedings which have been had since its conclusion fails entirely to disclose any such unfairness as these cases speak of. On the other hand, it is clear that appellant

[10] Pp. 471–472.

was given a fair trial, that no advantage was taken of him, and that he was treated with courtesy and consideration. The judgment of the court below is, therefore,

Affirmed.

RIVES, Circuit Judge, dissenting

On November 3, 1954, in the District Court of Moore County, Texas, the appellant, George Lee Parker, was
159 adjudged guilty of forgery and was sentenced to be confined in the State Penitentiary for a term of not less than two years nor more than seven years. Without counsel, he appealed on the record with no bills of exception. On March 23, 1955, the Court of Criminal Appeals of Texas, in a very brief opinion, affirmed the judgment of conviction. Parker v. State of Texas, 276 S.W. 2d 533. On August 29, 1955, Parker filed in the Court of Criminal Appeals of Texas a petition for habeas corpus alleging among other grounds that he was denied the assistance of counsel, was ill, and due to his physical condition was unable intelligently to defend himself. On September 21, 1955, that Court denied his application for permission to file writ of habeas corpus. On February 27, 1956, the Supreme Court of the United States denied certiorari, 350 U.S. 971. Parker has thus exhausted the remedies available in the courts of Texas as required by 28 U.S.C.A. § 2254.—See Brown v. Allen, 344 U.S. 443.

On August 31, 1956, Parker filed his application for the writ of habeas corpus in the United States District Court for the Southern District of Texas alleging that he had been denied the assistance of counsel and was unable to defend himself, that he was 67 years of age, and had been confined to bed with organic heart disease almost constantly since March, 1953, and had been treated at Moore County Jail, from one to four times per week, by Doctor O. J. Richardson of Dumas, Texas, from August 27 to November 3, 1954, and at trial was suffering from extreme 'dizzy spells' and in no way in position
to obtain justice." The district court called upon
160 the State of Texas and O. B. Ellis, General Manager of the Texas Prison System to answer Parker's petition. The issues framed by the petition, answer, and Parker's replication were thus stated by the district court in its order of October 8, 1956:

"The issues of law and facts are thereby presented of whether Parker is in custody in violation of the Constitution,

Laws, or Treaties of the United States (Section 2241(c)(3), Title 28, U.S.C.A.), in that at his trial in the State Court:

(a) He was not represented by counsel.

(b) He was (as he claims) sick when tried.

(c) The evidence (as he claims) was insufficient to support his conviction."

The district court ordered; "That the evidence in this matter be taken by November 5, 1956, under Section 2246, Title 28, U.S.C.A., by deposition and affidavit, etc."

Parker was not represented by counsel, nor was he present at any hearing of his petition for habeas corpus. He was not advised and did not take advantage of his right under said Section 2246 "to propound written interrogatories to the affiants," etc.

The stenographic transcript of the testimony upon Parker's trial for forgery shows that he was not represented by counsel, and that the trial court advised him as shown in footnote 3 to the majority opinion.

161 The indictment charged Parker with the forgery of only one check and that was in the amount of $38.00. The first witness for the prosecution was Elzy Quattlebaum, the son of Phoebia Quattlebaum, who testified that he did not sign nor authorize the signature to any of seven checks purporting to be signed "Phoebia Quattlebaum by Elzy Quattlebaum." The checks were in small amounts, the smallest $25.00 and the largest $55.00, and aggregated only $252.15. Each of the checks was payable to G. L. Parker, the appellant, by name and was endorsed by G. L. Parker. One bore his address. There was obviously no attempt to conceal Parker's actions. The jury could not have known from Elzy Quattlebaum's testimony that he had any family connection with Parker; in fact, he left the contrary impression:

"Q. You know G. L. Parker, don't you?

"A. I know of him.

"Q. Well, he is the defendant sitting here, isn't he?

"A. I think so."

It now appears from an affidavit of Maggie Parker:

"That, she is a sister of Elzie Quattlebaum, and the wife of George Lee Parker, ever since the month of May 1909, and

"That, for several years her brother, Elzie, has been a bitter enemy of her husband, Geo. L. Parker, against whom her Bro., Elzie, became the complaint, witness on on, apparently,

tromped up charge of forgery in the Disct. Court in Moore County, Texas, and

162 "That, the Bank account at Cheyenne, Okla. on which the controversial check was drawn was in her Mothers name, Mrs. Phoebia Quattlebaum, not in her Bro. Elzie Quattlebaum, the prosecuting witness against her husband."

Mrs. Phoebia Quattlebaum did not testify against her son-in-law, Parker, nor has she testified in any of the proceedings following his conviction. A reading of the testimony upon Parker's trial for forgery shows that he badly needed counsel. He did not cross-examine any one of the four state witnesses, except for a brief cross-examination of the one rebuttal witness. He did not testify in his own behalf, nor did he ever prove his family connection with the Quattlebaums.

John Easley, the Sheriff of Moore County, Texas, in answer to a question by counsel for the State, testified:

"Q. Mr. Parker has been in ill health, somewhat, hasn't he?

"A. Yes, sir, he has been in very ill health. I have had to buy him medicine and had to take him up and give him shots. I believe the doctor says he has heart trouble."

Four of the character witnesses introduced by Parker adverted to his ill health. The last one worked with Parker at a county swimming pool. "We worked at the swimming pool. He was sick and I knew he was sick and barely getting around * * *"

163 As its closing witness in rebuttal, the State recalled Sheriff Easley. Without any objection on behalf of Parker, he was permitted to testify as follows:

"Q. Mr. Easley, I will ask you whether or not there is at this time another indictment pending against this defendant, George Lee Parker?

"A. Yes, sir, there is.

"Q. And, that is another forgery case?

"A. Yes, sir.

"Q. Mr Easley, I will ask you whether or not you have received the record from the FBI on Mr. Parker?

"A. Yes, sir, I have.

"Q. Do you have it there in your hand?

"A. Yes, sir, I have it here.

"Q. I will ask you to refer to it to refresh your memory and tell us how many times that indicates he has been in the peni-

tentiary in connection with forged checks or fictitious checks?

"A. I believe seven times he has been in the penitentiary for bogus and forged checks.

"Q. That was in what state?

"A. Arkansas and Oklahoma, I believe, and also—

"Q. And, I think you said seven times. Would you refer to that again and tell us how many times he has been in the penitentiary regardless of the cause?

"A. Nine times. The first time he went was 1922 for removal of mortgaged property and then there was one other time there. It is either eight or nine times—I believe it is nine altogether and one of those was for disposing of mortgaged property in 1922.

164 "Q. What was the last time he was sentenced to the penitentiary?

"A. 1948—the 8th month and 29th day.

"Q. What was that charge?

"A. Forgery.

"Q. And, where was he sent?

"A. He was sent to Jefferson City, Missouri and got two years and I believe was paroled after serving some time.

"Q. And, that is approximately when he came to this county. Is that right?

"A. I don't know when Mr. Parker came to this county.

"Q. Are there any other miscellaneous offenses other than those that you have mentioned—I don't care that you mention them?

"A. Yes, sir. There has been a drunk charge, I believe, against George one time."

Any person with the slightest experience in the trial of criminal cases would know that after that testimony conviction of the defendant was a foregone conclusion. Further, his conviction was assured not because he was guilty of the offense for which he was indicted, but because, under that testimony, he was an habitual forger, still continuing his criminal career, and under indictment, whether guilty or not, for another offense of forgery. Those were not the issues on which Parker was entitled to be tried.

Upon such a record, it would appear that Parker's efforts to defend himself were little short of farcical. In view of the small amounts of the checks, his family connection with
165 the Quattlebaums, and the open way in which the

checks were payable to and endorsed by Parker, it is quite possible that he may have had a defense to the charge of forgery, or at least that mitigating circumstances might have been shown. The record of Parker's trial for forgery shows that he suffered badly from the lack of assistance of counsel, and tends to corroborate his claim of extreme illness.

If Parker was unable to defend himself, his trial without counsel was a mockery of justice and deprived him of due process of law. Betts v. Brady, 316 U.S. 455, 473. On that issue, as recognized by the district court, a substantial question of fact was presented. Notwithstanding the provisions of 28 U.S.C.A. § 2246, I think that the rule in habeas corpus proceedings, as well as in Section 2255 proceedings, is still that: "Where, as here, there are substantial issues of fact as to events in which the prisoner participated, the trial court should require his production for a hearing." United States v. Hayman, 1952, 342 U.S. 205, 223.

Indeed, the statute itself plainly so requires: "Unless the application for the writ and the return present only issues of law the person to whom the writ is directed shall be required to produce at the hearing the body of the person detained." 28 U.S.C.A. § 2243.

Of that provision, the Reviser's Note states: "The fifth paragraph providing for production of the body of the detained person at the hearing is in conformity with Walker v. Johnston, 1941, 61 S.Ct. 574, 312 U.S. 275, 85 L.Ed. 830." 28 U.S.C.A. § 2243, Reviser's note, p. 458.

166 This was commented on in footnote 38 to United States v. Hayman, supra, at p. 222.

The statute further provides:

"A court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto." 28 U.S.C.A. § 2243.

On the showing made, I think that Parker is entitled to issuance of the writ or to a show cause order, and to a hearing on the merits at which he should be present. Further, in its discretion and in order to assure justice, I think that the district court should offer Parker the assistance of counsel upon such hearing. I therefore respectfully dissent.

167 In United States Court of Appeals for the Fifth Circuit

October Term, 1957

No. 17047

D.C. Docket No. 9783 Civil

GEORGE LEE PARKER, APPELLANT

v.

O. B. ELLIS, GENERAL MANAGER, TEXAS PRISON SYSTEM, APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS

Before HUTCHESON, Chief Judge, and RIVES and CAMERON, Circuit Judges

Judgment

August 29, 1958

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Texas, and was argued by counsel;

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

RIVES, Circuit Judge, Dissenting.

Issued:

168 In United States Court of Appeals

[File endorsement omitted.]

[Title omitted.]

Petition for rehearing

Filed September 19, 1958

To the Honorable, United States Court of Appeals, Motion for Rehearing:

Comes now George Lee Parker, referred to as petitioner and prays the Honorable Court to reconsider his original application for the Writ of Certiorari, for the following reasons to-wit:

First: Petitioner alleges that he is in custody in direct violation of the Constitution, Laws and Treaties of the United States (Section 22(c)(3), Title 28 USCA), in that, at his trial in the State Court:

(a) He was not represented by Counsel.

(b) He was indisposed when tried.

(c) The evidence was insufficient to support his conviction.

Second: The further attention of the Honorable Court is directed to The Statement of Facts, pages 2–34.

At no time during the trial was petitioner ever represented by counsel. Page 2, Statement of Facts indicates petitioner was denied the aid and advice of counsel in direct violation of Constitutional rights, both Federal and State: Art. 6, U.S. Constitution Art. 1, Sec. 10 State Constitution.

The further attention of the Honorable Court is directed to the case of Williams v. Kaiser, 322 U.S. 725, 64 Ct. 1289, where it is said: "These are reasons why the right Counsel is fundamental."

169 Powell vs. Alabama, 287 U.X. at page 70, 53 S. Ct. at page 64, 77 L. Ed. 158, 84 A.L.R. 527; Crosjean vs. America Press Co. 297 U.S. 233, 243, 244, 56 S. Ct. 444, 446, 447, 80 L. Ed. 660; Avery vs. Alabama, 308 U.S. 444, 447, 60 S. Ct. 321, 322, 84 L Ed. 377.

"They indicate the protection which the individual needs when charged with crime. Prompt and expeditious detection and punishment of crime are necessary for the protection of society. But that may not be done at the expense of the Civil Rights of the citizen. Law enforcement need not be inefficient when accomodated to the Constitutional guarantees of the citizen."

Powell vs. Alabama, 287 U.S. 45,68, 69 (1932).

"The right to be heard would be, in many cases, of little or no avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence and, left without the aid of counsel, he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissable. He lacks both the skill and knowledge adequate to prepare his defence, even though he may have a perfect one. He requires the guiding hand of

counsel at every step of preceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence.

"In State prosecution, a conviction on a plea of 'guilty' obtained by a trick, Smith vs. O'Grady, 312 U.S. 329; 334 61 S. Ct. 572, 574, 85 L. Ed. 859, or, after refusal of a proper request for counsel, because of the accused's incapacity adequately to defend himself. Williams vs. Kaiser: 323 U.S. 471, 472, 62 S. Ct. 363, 364 will not support * * *
170 Such procedure violates the Fourteenth Ammendment to the Constitution. See Tompkins vs. Missouri, 323 U.S. 485, 65 S. Ct. 1068, 86 L. Ed. 1453. That ammendment is violated also when a defendant is forced by a State to trial in such a way as to deprive him of the effective assisstance of counsel. Powell vs. Alabama, 287, U.S. 52, 58, 53 S. Ct. 58, 60, 77 L. Ed. 158, 84, A.L.R. 527; House vs. Mays, 324 U.S. 42, 65 S. Ct. 572 Compare Ex Parte Hawk, 321, U.S. 114, 64 S. Ct. 448, 88 L. Ed. 572; Glasser vs. United States, 315 U.S. 60, 69, 70, 62 S. Ct. 457, 464, 465, 86 L. Ed 680. When the state does not provide corrective judicial process, the Federal Courts will entertain Habeas Corpus to redress the violation the Federal Constitutional rights. White vs. Ragan, 324 U.S. 760, 65 S. Ct. 978. When the corrective process is provided by the state, but error, in relation to the Federal question of Constitutional violation, creeps into the record, we have the responsibility, to review the state proceedings. Williams, vs. Kaiser, 323 U.S. 471, 472, 65 S. Ct. 363, 364; Tompkins vs Missouri (supra).

Massey vs. State, 347 U.S. 1011.

"Numerous decisions of this court make it perfectly clear that, if a sane but ignorant layman is tried in a state court without counsel, on a serious criminal charge, his inability to comprehend the legal issues will invalidate his conviction." See Palmer vs. Ashe, 342 U.S. 134 (1951); Gibbs vs. Burke, 337 U.S. 773, 780 (1949); Wade vs. Mays, 334 U.S. 672 (1948); De Meerless vs. Michigan, 329 U.S. 663 (1947); Rice vs. Olsen 324 U.S. 786 (1945); Smith vs. O'Grady, 312 U.S. 329 (1941).

The undisputed fact is that our Federal Constitution, interpreted in its meaning, clearly expressed that all citizens when accused of crime shall not stand helpless and alone before a court of this United States, though he be in the
171 instant case, ignorant, indigent, and unable to defend

himself. Nor, that he will be compelled to stand shoulder to shoulder with one skilled and versed in the science of law to defend himself in an unfamiliar proceeding with which he knows not even the interpretation or meaning of the words allayed before him or in what manner to cross-examine his accuser when, as in the case in hand, to compel him to divulge the instrument was authorized by him in the State of Oklahoma and the signature affixed was not that of your Petitioner.

Whereas, it is evident to this Honorable Court, the Petitioner was denied the aid and assistance of counsel at his trial and conviction in Moore County, Texas. As is shown by her Attorney-General of Texas, in violation of the Constitution of the United States and, it further being evidenced the Petitioner was deprived of his rights to the protection of the laws applicable to the offense under which he was tried and convicted in violation of the Laws and Constitution of the United States.

(b) Was Sick When Tried

The attention of the Honorable Court is called to several letters now on file with the Honorable Court C.A. 9783, Houston Division in matter of Petition George Lee Parker, Civil Action No. 9783.

Said letters are written and signed by doctors at Houghton and Liberal, Kansas, who treated petitioner from mid 1953 until his trial in November, 1954. Further attention is called to the following witness and Statement of Facts.

Statement of Ted Cain: Lines 22, 23, 24, 25 on page 22, and Lines 1-2, page 23.

Statement of John H. Worst, County Commissioner of Moore County: Lines 1-14, page 25.

Statement of Carl Hammer: Lines 10-22, page 27; Lines 1-7, page 28.

172 Statement of Thomas W. James: Lines 15-25, Page 28, Lines 1-12, Page 29.

Statement of Everett Tooney: Lines 18-25, Page 29.

Statement of John Easley: Sheriff of Moore County: Lines 22-25, Page 17.

173 (c) The evidence was insufficient to support conviction

The attention of this Honorable Court is directed to the testimony of Elgy Quattelbaum, a brother-in-law of petitioner,

who had personally known petitioner for more than 45 years and for 20 years has been the most unscrupulous enemy petitioner has ever had.

(Please see certified statement of Mrs. Maggie Parker in C.A. 9783 filed in this Honorable Court: See Lines 13–21 on Page 10.) The special attention of the Court is directed to Line 19. On the same page; see also Lines 19–20 on Page 11.

Mr. Baer, banker, was called by the state as an handwriting expert: Attention is called to Lines 12–19 Page 13; Line 25, Page 14; Lines 1–25, Page 15; Lines 1–7, Page 16.

(Statement of Facts)

Little need be said about the hearsay testimony of Sheriff Easley on page 17. Petitioner certifies that at no time did he ever make a statement to Sheriff Easley or anyone else that he wrote or endorsed such check. It is true, however, that Petitioner did tell Sheriff Easley that he did write two small checks made payable to Everett Toomey (Page 30, Statement of Facts). It was this same Sheriff Easley who rushed to the stand with a list purported to be convictions against George L. Parker and could not read them. He admitted that he was confused and didn't really know how many convictions there were. (See Statement of Facts, Line 2, page 32, Lines 9–12, Page 32: Lines 8–19, page 33.)

The Jury was impressed by Sheriff Easley's statements about the possibility of such convictions. Certainly, under the rules of evidence, such testimony was not admissible unless nor until the defendant in a criminal case is placed on the witness stand. Here again Petitioner was denied his Constitutional rights.

174 May it please the Honorable Court, the Petitioner herein respectfully submits that trial court proceedings in the instant cause were highly improper, unlawful, and exceedingly damaging to the interests of the Petitioner; but fits in admirable with the statement under the oath of office that George L. Parker was present in Court, his counsel also being present (Transcript: Page 9).

Petitioner certifies that he never had any dealing whatsoever with Margaret Ann Castle (Page 18, Statement of Facts). Her job was in the Information Desk and I never saw her in the Teller's cage at any time. Her capacity in the bank was never stated by the County Attorney. Your Petitioner alleges

that County Attorney McDonald, seeing that he had no evidence to support a charge of forgery, called on his good friend, Miss Castle, and placed her on the stand as the last witness to impress the Jury and there the State rested the case.

Again, Petitioner calls attention to the Charge of the Court (Transcript, Page 3, par. 11, the last paragraph in the Court's Charge. Again the Jury could have been misled.

Petitioner should not have been tried for the offence of forgery, the offence of passing a forged instrument would have been proper, and Petitioner could have been convicted on a charge of that nature. Forgery and the passing of a forged instrument are two separate charges with different penalties: Art. 979, Forgery 2-7 years. Art. 996, Passing a forged instrument 2-105 years.

Therefore when Petitioner was tried on one (Forgery) and evidence all points to the effect that he was not guilty of forgery; and no mention is made in the indictment of the charge of passing a forged instrument, Petitioner was tried without due process of law, and it constitutes a reversible error.

175 Petitioner would further show that prior to, at the time of, and at present, he was under the care of doctors, and was under constant strain. Therefore, his physical and metal condition was such that it would be impossible for him to intelligently defend himself, even if he were versed in the intricate operations of the law. He was denied his rights of appeal since he did not know the proper procedure for entering an appeal. Petitioner has letters on file with this Honorable Court from reputable doctors stating fully the physical condition of Petitioner.

Petitioner herein respectfully moves this court, after reviewing all facts as set forth herein, grant Petitioner a hearing to determine the injury received at the hands of those in authority in the State courts, and various and divers denials of his rights as an American citizen. George Lee Parker prays that this Honorable Court will unto him such relief as in the Court's opinion may seem mete and proper based upon the facts in the proceedings as he finds them to be to George Lee Parker, and the said Parker will ever pray.

Respectfully submitted.

George Lee Parker.
GEORGE LEE PARKER.

176 In United States Court of Appeals

[Title omitted.]

Minute entry of order denying rehearing

September 29, 1958

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

RIVES, Circuit Judge, dissenting.

177 [Clerk's certificate to foregoing transcript omitted in printing.]

178 Supreme Court of the United States

No. 350 Misc., October Term, 1958

GEORGE LEE PARKER, PETITIONER

v.

O. B. ELLIS, GENERAL MANAGER, TEXAS PRISON SYSTEM

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Order granting motion for leave to proceed in forma pauperis and granting petition for writ of certiorari

March 2, 1959

On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 743.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

MARCH 2, 1959.

U. S. GOVERNMENT PRINTING OFFICE 1959

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JAMES R. BROWNING, Clerk

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959

No. 38

GEORGE LEE PARKER,

Petitioner,

vs.

O. B. ELLIS, General Manager, Texas Prison System,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF FOR THE PETITIONER

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959

No. 38

GEORGE LEE PARKER,

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vs.

O. B. ELLIS, General Manager, Texas Prison System,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE PETITIONER

Opinion Below

The opinion of the Court of Appeals (R. 80-90) is reported at 258 F.2d 937.

Jurisdiction

The judgment of the Court of Appeals was entered August 29, 1958 (R. 91). On September 29, 1959, petition for rehearing (R. 91-96) was denied by the Court of Ap-

peals (R. 97). Petition for writ of certiorari was filed October 24, 1958, and on March 2, 1959, was granted with leave to proceed in forma pauperis. The jurisdiction of this Court rests on 28 U.S.C. 1254(1), 28 U.S.C. 1651 and 28 U.S.C. 2241.

Questions Presented

I.

Whether a sick, aged and indigent defendant is deprived of due process of law in violation of the Fourteenth Amendment to the United States Constitution when he is left to defend himself, without counsel, in a State felony trial, and is convicted despite the fact that:

(a) The indictment is invalid as a matter of State law;

(b) The evidence is wholly insufficient to sustain conviction;

(c) Inadmissible and prejudicial evidence is repeatedly tendered by the prosecution and admitted in evidence by the court; and

(d) The judge fails to instruct the jury as to the elements of the offense and as to the affirmative defenses raised by the evidence.

II.

Whether this Court has lost its power to correct erroneous decisions of lower federal courts denying habeas corpus to a State prisoner, thereby leaving in effect erroneous federal precedents which adversely affect his rights, simply because he has completed serving his sentence after this Court has granted certiorari but before it has entered judgment.

Constitutional Provisions and Statutes Involved

Section 1 of the Fourteenth Amendment to the United States Constitution provides in pertinent part:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Section 1254, Title 28, United States Code provides in pertinent part:

> "§ 1254. Court of Appeals; certiorari; appeal; certified questions.
>
> "Cases in the Courts of Appeals may be reviewed by the Supreme Court by the following methods:
>
> "(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree; * * *"

Section 1651, Title 28, United States Code provides in pertinent part:

> "§ 1651. Writs
>
> "(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law. * * *"

Section 2106, Title 28, United States Code provides:

> "§ 2106. Determination
>
> "The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or

reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances."

Section 2241, Title 28, United States Code provides in pertinent part:

"§ 2241. Power to grant writ

"(a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the District Courts and any circuit judge within their respective jurisdictions. . . .

" • • •

"(c) The writ of habeas corpus shall not extend to a prisoner unless—

" • • •

"(3) He is in custody in violation of the Constitution or laws or treaties of the Unted States; or

" • • • "

Article 979, Title 14, Vernon's Penal Code of Texas provides:

"Article 979. 924, 530, 431 'Forgery'

"He is guilty of forgery who without lawful authority, and with intent to injure or defraud, shall make a false instrument in writing purporting to be the act of another, in such manner that the false instrument so made would (if the same were true) have created, increased, diminished, discharged or defeated any pecuniary obligation, or would have transferred, or in any manner have affected any property whatever."

Article 494, Vernon's Code of Criminal Procedure of Texas, as amended effective June 1, 1959; Vernon's 1959 Texas Session Law Service, Pamphlet 5, p. 1061, provide:

"Section 1. That Article 494, Vernon's Code of Criminal Procedure, is amended to read as follows:

" 'Article 494.

" 'Whenever it is made known to the court at an arraignment or any other time that an accused charged with a felony is too poor to employ a counsel, the court shall appoint one (1) or more practicing attorneys to defend him.

" 'The counsel so appointed shall have ten (10) days to prepare for trial, unless such time be waived in writing by said attorneys and the accused.'

"Sec. 2. The fact that Article 494 applied to capital cases and does not apply to ordinary felonies creates an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three separate days in each House be suspended, and this Rule is hereby suspended, and that this Act take effect and be in force from and after its passage and be it so enacted."

Article 727, Vernon's Code of Criminal Procedure of Texas provides:

"Art. 727. When confession shall not be used

"The confession shall not be used if, at the time it was made, the defendant was in jail or other place of confinement, nor while he is in the custody of an officer, unless made in the voluntary statement of accused, taken before an examining court in accordance with law, or be made in writing and signed by him;

which written statement shall show that he has been warned by the person to whom the same is made: First, that he does not have to make any statement at all. Second, that any statement made may be used in evidence against him on his trial for the offense concerning which the confession is therein made; or, unless in connection with said confession, he makes statements of facts or circumstances that are found to be true, which conduce to establish his guilt, such as the finding of secreted or stolen property, or the instrument with which he states the offense was committed. If the defendant is unable to write his name, and signs the statement by making his mark, such statement shall not be admitted in evidence, unless it be witnessed by some person other than a peace officer, who shall sign the same as a witness."

Article 732a, Vernon's Code of Criminal Procedure of Texas provides:

"Art. 732a. Indictment, information or complaint not admissible to impeach witness

"The fact that a defendant in a criminal case, or a witness in a criminal case, is, or has been, charged by indictment, information or complaint, with the commission of an offense against the criminal laws of this State, of the United States, or any other State shall not be admissible in evidence on the trial of any criminal case for the purpose of impeaching any person as a witness unless on trial under such indictment, information or complaint a final conviction has resulted, or a suspended sentence has been given and has not been set aside, or such person has been placed on probation and the period of probation has not expired."

Statement

1. The Trial in the Texas Courts.

A. *The Indictment and the Preliminary Proceedings*

A Texas grand jury indicted Parker for forging the name "Elzie Quattlebaum" to a $38.00 check payable to "G. L. Parker" and signed "Phoebia Quattlebaum x B Elzy Quattlebaum" (R. 5-6). The relationship between these people was never revealed in the trial court. It was first clarified in an affidavit submitted by Parker's wife to the U. S. District Court in connection with Parker's application for a writ of habeas corpus, in which she explained that (1) "Phoebia Quattlebaum" was her mother, and thus was Parker's mother-in-law, and (2) "Elzie Quattlebaum" was her brother and Parker's brother-in-law, and "for several years" had been Parker's "bitter enemy" (R. 42).

Parker's application also alleged that at the time of the trial he was 67 years old, and was suffering from organic heart disease for which he was receiving treatment in jail (R. 2).

When the case was called for trial, the following colloquy took place (R. 57-58):

> The Court: I am calling for trial Cause Number 503, styled the State of Texas against George Lee Parker. Is that you?
>
> Mr. Parker: That is right.
>
> The Court: You were indicted by a Grand Jury of this county on July 26 of this year, charged with the offense of forgery. Are you ready for trial?
>
> Mr. Parker: Yes, sir.
>
> The Court: Do you want a trial by jury or without a jury?

Mr. Parker: Well, it is immaterial to me, Judge. I don't have any attorney.

The Court: Well, you are going to have to make up your mind. It is certainly immaterial to the court.

Mr. Parker: I guess a jury then.

The Court: You want a trial by jury?

Mr. Parker: Yes, sir.

The Court: Do you have a lawyer hired?

Mr. Parker: No, sir, I don't.

The Court: The law does not require the court to appoint an attorney to represent a defendant where he has a trial by jury and it is not the practice of this court to appoint any attorney to represent the defendant. It is up to him to arrange for his own counsel. Now, if you are eligible for a suspended sentence, why, then, the court would get some lawyer to advise you about the procedure in filing your application for a suspended sentence but only for that part and only if you are eligible for a suspended sentence. If you are not qualified to get a suspended sentence, there would not be any sense in applying for it.

Mr. Parker: No.

The Court: If you want to apply for a suspended sentence, you let me know and I will arrange for a lawyer to help you with that part only.

Mr. Parker: I will not apply for any suspended sentence.

The Court: All right. I believe you said you were ready for trial.

Mr. Parker: Yes, sir.

In a certificate presented to the U. S. District Court by the State of Texas, the trial judge admitted advising petitioner "that no counsel would be appointed on a plea of not guilty before a jury in a non-capital offense case"

and that "no counsel was appointed for him" (R. 30). The State judge also certified that petitioner declined to examine the veniremen on their *voir dire* and declined to exercise his preemptory challenges (R. 30).

B. The Evidence at the State Trial.

1. *The State's Case as Presented by the District Attorney*

Four witnesses testified against Parker (R. 59-71) before the State rested its case. Phoebia Quattlebaum, in whose name the check described in the indictment was drawn (R. 5-6), was never called as a witness. Petitioner, representing himself, waived his right to examine each prosecution witness (R. 65, 67, 69, 71). He did not object to any testimony or to the introduction in evidence of six checks not mentioned in the indictment (State's Ex. 2 through 6, R. 61-64).

Elzie Quattlebaum explained that Phoebia Quattlebaum was his mother (R. 59). He swore that he had never before seen the check in question (R. 59), although it had been given to him by a relative "down home" (R. 60), that he did not sign the check (R. 59, 65), that he did not authorize the defendant (R. 59) or anyone (R. 65) to sign it or to use his mother's name (R. 59-60) or his own name (R. 60).

Quattlebaum was also allowed to testify that his mother "didn't authorize anyone to use that signature" (R. 65) and had never "gotten her money back on those checks" (R. 60).

When the District Attorney asked whether he knew petitioner, Quattlebaum gave the following answers (R. 59):

A. I know of him.

Q. Well, he is the defendant sitting here, isn't he?

A. I think so.

Q. Well, as a matter of fact, you know he is, don't you, Mr. Quattlebaum? A. Yes.

Q. How long have you known him? A. Well, a long time.

Asked whether the checks were in petitioner's handwriting, Quattlebaum was allowed to answer, "I reckon they are; they sure ain't in mine" (R. 64).

An officer of the bank to which the checks in question were presented, who had worked for the bank 21 years (R. 65) and who had "examined and seen lots of handwriting" (R. 67), thought that identifying the handwriting of the indorsements "G. L. Parker" would be a "pretty difficult question" (R. 67). He said, "That don't look too much like some of the signatures of his that I have seen" (R. 66). A teller for the same bank "handled" three of the seven checks introduced in evidence (R. 69), saw the petitioner indorse one of those checks (R. 70), and testified that when one of these checks was returned she contacted petitioner who told her later "that he had contacted this person and she had told him to write another check" (R. 70).

The local sheriff testified that petitioner admitted writing the checks (R. 68) and added that petitioner "has been in very ill health. I have had to buy him medicine and had to take him up and give him shots. I believe the doctor says he has heart trouble" (R. 68).

The District Attorney asked the sheriff the following question and received the following answer (R. 68-69):

Q. I believe after he was out on bond—originally, after he was indicted, didn't you have another check or two come in on him? A. Yes, sir. We had some small checks.

2. Petitioner's Effort to Defend Himself

In his certificate to the U. S. District Court, the State trial judge said, "If I had observed any evidence indicating that the defendant was handicapped either mentally or physically, the case would not have been tried at that time, irrespective of any request for postponement by the defendant" (R. 30).

At the trial before this judge, petitioner called seven witnesses (R. 71-76). He asked each of them "Tell the jury what you know about me", or words to that effect (R. 71, 72, 73, 74, 75). They testified that "his physical condition, according to everything, is bad or, at least, the doctors say so, you know . . . I do know that he needs medical care" (R. 71), that "he is ill with heart trouble" (R. 73), that, "I don't know—you know—much about the old man only, you know, his health. I do know that he don't have any health" (R. 74) and that "about all I know about him is that the old fellow has heart trouble" (R. 75).

After the testimony of each of these witnesses, petitioner said, "That is all", or words to that effect (R. 72, 73, 74, 75). Petitioner saw fit to conclude his examination of his last witness, however, with the expression, "Ask him anything you want" (R. 75). Then the following cross-examination took place (R. 76):

> Q. You have had some bad checks from Mr. Parker yourself, haven't you? A. Yes, sir.
>
> Q. Still have some on him? A. Yes, sir.
>
> Q. Were those written on his own name or someone else's name? A. In his name.
>
> Q. Just hot checks he had given you? A. Yes, sir.
>
> Mr. McDonald: I believe that is all.

3. *The District Attorney's Rebuttal*

In rebuttal, the State called the local sheriff again. He testified that he had "received the record from the FBI on Mr. Parker" (R. 76) and that it showed Parker had been "in the penitentiary" nine times "regardless of the cause" (R. 77). The sheriff said Parker had never been sentenced or tried in Texas on any offense (R. 78), but that another forgery indictment was pending against Parker (R. 76).

4. *The Result of the Trial*

Instructed by the judge that the maximum sentence was seven years (R. 26), the jury returned a verdict convicting petitioner and assessing his punishment at seven years (R. 26). A motion for new trial, based on insufficiency of evidence and denial of counsel, was overruled (R. 56-57). In a 73-word opinion not included in this record but reproduced as Appendix A to this brief, the Court of Criminal Appeals of Texas affirmed the conviction. *Parker v. State*, 276 S.W. 2d 533. No application was made for review by this Court.

II. The Collateral Attack

A. *Petitioner's State Habeas Corpus Application*

Parker presented a petition for a writ of habeas corpus to the Court of Criminal Appeals of Texas (R. 35-37), claiming that he was unlawfully denied counsel, that he was physically unable to defend himself, and that the evidence was insufficient (R. 36-37). In a 141-word opinion dated September 21, 1955 (R. 10), that court held that petitioner had not shown that he needed a lawyer, that if he was too ill to stand trial he should have filed a motion for continuance, and that the question of sufficiency of

evidence "was disposed of adversely to his contention in the appeal. . . ." The Court of Criminal Appeals did not grant petitioner leave to file his petition (R. 10) and this Court denied certiorari on February 27, 1956 (R. 29).

B. *Petitioner's Federal Habeas Corpus Application*

Turning to the federal courts, petitioner filed an application for a writ of habeas corpus in the Southern District of Texas on May 31, 1956 (R. 1-3). At least three times while this case was pending in the District Court, petitioner asked that some lawyer be appointed to help him present his case (R. 15, 44, 53).

Petitioner's hand-written claim was that he was denied counsel (R. 1); that he was too sick at the time of trial to help himself (R. 2), that the jury was hand-picked by the county attorney (R. 2), and that the evidence was insufficient to sustain his conviction (R. 2-3).

The District Court ordered the State of Texas to answer petitioner's pleadings and established a time-table for briefs (R. 16-18), without suggesting that petitioner needed the lawyer he had already requested (R. 15). Later the District Court called for deposition, affidavits and briefs (R. 45-46), still leaving petitioner without a lawyer, and finally dismissed the case on January 8, 1957, because no record of facts had been developed in accordance with that order (R. 46-47).

Parker finally managed to obtain a transcript of his trial with the help of a fellow prisoner, who purchased it for $25 and loaned it to Parker on March 22, 1957. Parker filed it in the District Court with his motion for rehearing on April 29, 1957 (R. 47-55). This motion for rehearing, accompanied by another motion seeking appointment of counsel (R. 53), was denied by the District Court on June

24, 1957 (R. 79). The Court of Appeals for the Fifth Circuit affirmed such denial 2 to 1, with Judge (now Chief Judge) Rives dissenting.

Summary of Argument

It is settled by the decisions of this Court that due process requires a State criminal court to tender the assistance of counsel to one accused of serious offenses where the complicated nature of the offense charged and the possible defenses thereto, in the light of the age and condition of the defendant, render criminal proceedings without counsel so apt to result in injustice as to be fundamentally unfair. A review of the record of petitioner's trial makes it clear that this line of decisions is directly applicable here.

Petitioner could not possibly be expected to know what any Texas lawyer should have known: That his indictment was defective under Texas law; that no evidence was introduced as to crucial elements of the offense charged; that the sheriff's testimony as to his confession, on the basis of which the Court of Criminal Appeals affirmed his conviction, was not admissible if properly objected to; that he could have prevented the State from introducing evidence as to his prior convictions and his indictment in another case; and that the judge's instructions to the jury did not include the affirmative defenses which he was entitled to raise.

In the light of his age and illness and his obvious inability to conduct an adequate and fair defense, as well as the complexity of the issues which the evidence presented, this case comes squarely within the area defined by this Court in *Cash* v. *Culver*, 358 U.S. 633, in which a defendant has a constitutional right to be provided with counsel. The issue is so clear-cut that this Court with

entire propriety could have summarily reversed the decisions of the lower courts and either remanded the cause or issued a writ of habeas corpus itself.

On June 6, 1959, more than three months after this Court granted his petition for certiorari, Parker completed serving his sentence with time off for good behavior and was released from custody. However, this Court has inherent discretionary authority to issue a writ of habeas corpus to petitioner *nunc pro tunc* as of the day on which certiorari was granted, or any other date prior to his release from custody.

Such a judgment is particularly appropriate in view of the delay caused by the lower court's refusal to appoint counsel for Parker in accordance with his request. Here, as in *Pollard* v. *United States*, 352 U.S. 354, Parker's conviction may entail collateral disadvantages which justify this Court in dealing with the merits of Parker's petition. Although that case was brought under 28 U.S.C., Sec. 2255, the same considerations should be applicable here.

Moreover, this Court should not allow the erroneous opinion of the Court of Appeals for the Fifth Circuit to remain in force as a precedent for future litigation. By issuing a writ of habeas corpus *nunc pro tunc*, this Court will erase the continuing consequences to Parker of the erroneous decisions of the lower federal courts, and will substitute a correct precedent for future litigation.

ARGUMENT

I.

Petitioner's State Trial Was Replete With Prejudicial Error Which Any Texas Lawyer Could Have Recognized and Prevented, and Which Deprived Petitioner of a Fair Trial and of Due Process of Law.

George Lee Parker's Texas trial has run the gantlet of review in the State courts. Nevertheless, no Texas lawyer can read this record carefully without painful awareness of the shameful ease with which the prosecution overwhelmed this uncounseled petitioner, particularly since the practice of requiring a pauper to defend himself in felony trials has since been repudiated in Texas by both the courts and the Legislature.

Neither the indictment, nor the evidence, nor the instructions to the jurors provided a proper basis for Parker's conviction. The failure of State and Federal judges in Texas to recognize the validity of Parker's claims can be accounted for only by the fact that Parker has not had a lawyer's help until the filing of this brief—the precise objection which Parker has been trying to raise in his labored, handwritten pleadings.

1. *The Indictment.*

It is clear that the legal instrument which brought Parker into court in the first place was fatally defective as a matter of Texas law. The indictment (R. 5-6) charged that Parker forged the name "Elzie Quattlebaum" to a check signed "Phoebia Quattlebaum" by "Elzy Quattlebaum." The Texas cases are legion that such an indictment is invalid because of a fatal variance between the purport clause, describing the name alleged to be forged, and the

tenor clause, describing the instrument. Under Texas law, if an instrument alleged to be forged is signed "B" by "A", the indictment must allege that the name of "B" was forged as well as the name of "A", since "B" is the person purportedly bound by the instrument. See *Thulemeyer* v. *State*, 38 Tex. Cr. R. 349, 43 S.W. 83, and the cases collected in Branch's Annotated Penal Code of Texas, 2nd ed., sec. 1580, Vol. 3, p. 721.

2. *The Evidence.*

It is also obvious that there is a complete absence of evidence that Parker committed the offense which the grand jury endeavored to charge in the indictment. The gist of this offense is that Phoebia Quattlebaum's name was forged. See *Thulemeyer* v. *State*, *supra*, 38 Tex. Cr. R. 349, 43 S.W. 83, 84. The statute (Art. 979, Vernon's Penal Code of Texas), requires that the writing be "without lawful authority" and the cases demand that this want of authority be proved beyond reasonable doubt like all other elements of the offense. See *Brown* v. *State*, 55 Tex. Cr. R. 9, 114 S.W. 820, 822; *Turner* v. *State*, 146 Tex. Cr. R. 474, 176 S.W. 2d 327, 328. While Elzie Quattlebaum testified that he did not give Parker permission to write his name (R. 59-60), the only evidence as to authority extended by Phoebia Quattlebaum was Elzie's testimony that his mother "didn't authorize anyone to use that signature" (R. 65). This is clearly hearsay, of course, and the Texas cases hold that hearsay has no probative value and will not support a verdict even if admitted without objection. *Smith* v. *Lynn*, 152 S.W. 2d 838, 840, quoting 17 Tex. Jur. Evidence, Sec. 416. And although the sheriff testified that Parker had admitted writing the checks (R. 68), there was no admission that Parker lacked authority from Phoebia Quattlebaum to do so. Indeed, the State's own evidence proved that Parker claimed to have authority to write

checks in Phoebia Quattlebaum's name—the bank teller testified that when one of the checks was returned Parker told her "that he had contacted this person and she had told him to write another check" (R. 70).

It has long been the rule in Texas that:

> "Where the defendant does not testify in the case, and where the State in developing its case in chief introduces in connection with a confession or admission of the defendant an exculpatory statement which if true would entitle him to an acquittal, the jury should be told that he is entitled to a verdict of not guilty unless such exculpatory statement has been disproved or shown to be false by other evidence in the case." *Otts* v. *State*, 116 S.W. 2d 1084, 1088. See *Robidoux* v. *State*, 34 S.W. 2d 863, and *Turner* v. *State*, 176 S.W. 2d 327, 328-329.

Thus Parker's statement to the bank teller alone was enough to render the evidence insufficient, since there is no evidence with probative value indicating that Parker's claim of authority was false.

Moreover, Texas law expressly provides that the confessions or admissions of a defendant made in jail or while in custody of a police officer are inadmissible unless in writing, with some exceptions not applicable here. Art. 727, Vernon's Code of Criminal Procedure of Texas. Thus the sheriff's testimony as to Parker's oral statement could never have been properly admitted if Parker had known enough law to object. Yet this testimony by the sheriff was the sole evidence referred to by the Texas Court of Criminal Appeals in upholding Parker's conviction! See Appendix A to this brief.

It is difficult to tell what Parker was trying to prove with the testimony of the witnesses he called on his own

behalf (R. 71-76). It is not at all hard to recognize, however, that the State took advantage of Parker's fumbling effort to defend himself and succeeded in introducing evidence which never would have found its way into the record if a lawyer had been at Parker's side.

The thrust of the testimony of Parker's witnesses was that Parker was sick, although there was some testimony which might refer to general character. If these witnesses were supposed to be general character witnesses, the State had no right to show specific acts of misconduct by Parker on cross-examination. See *Shipley* v. *State*, 100 S.W. 2d 704, 706. Nevertheless, the State was allowed to ask one of them whether he had received some "hot checks" from Parker (R. 76). The State was also allowed to prove, apparently in "rebuttal" as to Parker's character, that Parker was under indictment in another case (R. 76). Even if Parker had testified in his own behalf, and he did not, the introduction of such evidence is prohibited by the clear and unequivocal language of Art. 732a, Vernon's Code of Criminal Procedure.

The truth of the matter is, of course, that no lawyer in his right mind would have injected Parker's character into evidence, considering his record. Once having done so, however, any competent counsel would be expected to recognize that Parker's record was never properly proved. The sheriff's recitation from a paper not shown to be authenticated in any way and not introduced in evidence is nothing more than hearsay. See *Hines* v. *State*, 248 S.W. 2d 156.

When a defendant is tried without a lawyer in Texas, the judge has at least some affirmative duty to protect the rights of the accused by excluding inadmissible evidence. *Randolph* v. *State*, 265 S.W. 2d 114, 115. The trial judge's abdication of this responsibility might alone have been

reversible error, if a lawyer had been available to assist Parker in presenting the point to the Texas Court of Criminal Appeals.

3. *Instructions to the Jury.*

Although this was a jury trial, the jury was never given a real chance to decide the issues presented by the evidence, because the trial judge's instructions wholly failed to identify those issues for the jurors. As noted earlier in this argument, Parker was entitled to an instruction that the State must disprove his exculpatory statement to the bank teller. Furthermore, since her testimony raises the affirmative defense of authority to sign the checks, Parker was entitled to a specific instruction explaining the State's responsibility to prove lack of authority beyond reasonable doubt.

> "It is a well-settled rule in this state that a defendant is entitled to an affirmative instruction upon every issue raised by the evidence, whether such evidence was produced by the state or the defense and whether it be strong or feeble, unimpeached or contradicted." *Matterson* v. *State*, 152 S.W. 2d 352, 354-355.

Neither of the above instructions may be found in the trial court's charge (R. 23-26). As a matter of fact, the charge nowhere advises the jurors that it is Phoebia Quattlebaum's signature which must be proved beyond reasonable doubt to have been forged without lawful authority.

4. *Denial of Due Process of Law.*

With knowledge of the legal defects in this record under Texas law, it is difficult to understand how the majority of the Court of Appeals could have concluded that Parker received a fair trial. The answer must be that the majority

of the judges on the Court of Appeals did not realize how far Parker had been overreached because no lawyer appeared for Parker to tell that court either." Yet without considering the points of Texas law discussed above, Judge Rives in his dissent aptly summarized the evidence and Petitioner's position as follows:

> "Any person with the slightest experience in the trial of criminal cases would know that after that testimony conviction of the defendant was a foregone conclusion. Further, his conviction was assured not because he was guilty of the offense for which he was indicted, but because, under that testimony, he was an habitual forger, still continuing his criminal career, and under indictment, whether guilty or not, for another offense of forgery. Those were not the issues on which Parker was entitled to be tried.
>
> "Upon such a record, it would appear that Parker's efforts to defend himself were little short of farcical. In view of the small amounts of the checks, his family connection with the Quattlebaums, and the open way in which the checks were payable to and endorsed by Parker, it is quite possible that he may have had a defense to the charge of forgery, or at least that mitigating circumstances might have been shown. The record of Parker's trial for forgery shows that he suffered badly from the lack of assistance of counsel, and tends to corroborate his claim of extreme illness" (R. 89-90).

In the majority opinion, the Court of Appeals quoted from this Court's opinion in *Betts* v. *Brady*, 316 U.S. 455, 471-472, to the effect that "in the great majority of the States, it has been the considered judgment of the people, their representatives and their Courts that appointment

of counsel is not a fundamental right, essential to a fair trial." This is no longer the view in Texas. Since Parker's petition for certiorari was granted by this Court, the Texas Legislature has amended Article 494, Vernon's Code of Criminal Procedure, to require appointment of counsel for any accused who is charged with a felony and is too poor to employ an attorney, rather than only those who are arraigned for a capital offense. See Vernon's 1959 Texas Session Law Service, Pamphlet 5, Page 1061. Moreover, the Court of Criminal Appeals of Texas has begun to accord fuller significance to the decisions of this Court as to the duty of trial courts to appoint counsel for indigent defendants in serious criminal cases. Its most recent decision in this area is *Moore* v. *State*, 324 S.W. 2d 879 (May 13, 1959) which accepts the doctrine set forth by this Court in *Cash* v. *Culver*, 358 U.S. 633, that a defendant is denied due process of law when he is put to trial without a lawyer, at least in a complex case.*

George Lee Parker did not get the benefit of this new statute or of this shift in emphasis by the Court of Criminal Appeals. In denying his petition for habeas corpus, that court summarily held that Parker had not alleged sufficient facts to require appointment of counsel, and then itself provided evidence of Parker's need for counsel by pointing out that he did not raise the question of his illness properly by a "motion for continuance" at the time of his trial.

It is difficult to believe that either the Texas Court of Criminal Appeals or the lower federal courts would have rejected Parker's petition if they had had the benefit of

* It is interesting to note that the *Moore* opinion as published in the Southwestern Reporter shows an appearance of counsel for Moore on appeal. Perhaps the Court of Criminal Appeals would have taken a different view of Parker's record if he could have had legal counsel to focus his legal rights and arguments there.

this Court's opinion in *Cash* v. *Culver*, which was decided after Parker's petition for certiorari had already been filed. Indeed, this Court could well have been speaking of Parker instead of Cash when it stated:

> "In the 17 years that have passed since its decision in Betts v. Brady, 316 U.S. 455, this Court, by a traditional process of inclusion and exclusion has, in a series of decisions, indicated the factors which may render state criminal proceedings without counsel so apt to result in injustice as to violate the Fourteenth Amendment. The alleged circumstances of the present case so clearly make it one where, under these decisions, federal organic law required the assistance of counsel that it is unnecessary here to explore the outer limits of constitutional protection in this area.
>
> 'Where the gravity of the crime and other factors—such as the age and education of the defendant, the conduct of the court or the prosecuting officials, and the complicated nature of the offense charged and the possible defenses thereto—render criminal proceedings without counsel so apt to result in injustice as to be fundamentally unfair,' the Constitution requires that the accused must have legal assistance at his trial. Uveges v. Pennsylvania, 335 U.S. 437, 441. Of particular relevance here are the decisions of the Court which have held the appointment of counsel necessary to a fair trial because of the complexity of the proceedings. Rice v. Olson, 324 U.S. 786; Gibbs v. Burke, 337 U.S. 773; and see Williams v. Kaiser, 323 U.S. 471, 475-476." 358 U.S. at 636-637.

Here, as with Cash, "The problems which this testimony raised were thus beyond the ken of a layman, and it was clearly the kind of testimony that could seriously damage a defendant in the eyes of a jury." Here, as in that case,

a lawyer would have found innumerable "opportunities of which we cannot assume that a layman would be aware." 358 U.S. at 638.

The only significant difference from Cash's case is that here the facts have been fully developed by affidavit. As the Court of Appeals recognized, they are "without dispute on any material point." The opinion in *Cash* v. *Culver* is so directly applicable to these facts that on its authority this Court with entire propriety could have summarily reversed the decisions of the lower courts. Moreover, under 28 U.S.C. §§1651, 2106 and 2241, this Court had full authority either to remand the cause to the trial court or to grant the writ of habeas corpus itself.

II.

This Court Should Exercise Its Discretionary Authority to Issue a Writ of Habeas Corpus Nunc Pro Tunc as of a Date While Petitioner Was Still in the Custody of Respondent.

On June 6, 1959, George Lee Parker was released from the Huntsville State Penitentiary, having served his seven-year sentence with time off for good behavior. This was more than three years after he applied to the U. S. District Court for a writ of habeas corpus, more than seven months after his petition for certiorari was filed, and more than three months after certiorari was granted by this Court.

If Parker had had counsel to guide him expeditiously through the maze of procedural requirements; if his petition for certiorari had been granted promptly enough to permit argument and decision during the 1958 term; or even if petitioner had slugged a guard or otherwise sacrificed his time off for good behavior,—then he would still have an opportunity to clear his name of this conviction.

None of these things happened, and Petitioner has now been released from custody. The basic question is whether such release terminates this Court's jurisdiction to enter a decree reversing the erroneous decisions of the lower federal courts in this case.

28 U.S.C., Section 2241, gives this Court, as well as the U. S. District Courts, power to grant the writ of habeas corpus. The statute also provides that the writ shall not extend to a prisoner unless he is in custody. It is submitted, however, that this Court has full jurisdiction and authority to enter a judgment issuing a writ of habeas corpus as of a date prior to petitioner's release from custody, under the traditional and inherent power of courts to enter decrees and judgments *nunc pro tunc*.

As is stated in 1 Freeman on Judgments:

> "The power to enter judgment nunc pro tunc is not confined to trial courts, but is exercised also by courts of appeal whenever the circumstances make such action appropriate, as where one of the parties has died pending an appeal or writ of error and before decision. If a cause is argued and submitted either upon the merits or upon motion to dismiss the appeal, and thereafter one of the parties dies, the final judgment of reversal or affirmance or dismissing the appeal will be entered as of some day prior to the death of the party but subsequent to the argument." Pp. 250-251.

Freeman also points out that this inherent judicial power is not dependent on any statute, and may be exercised in criminal as well as in civil actions. *Id.* at pp. 221, 252.

An example of this Court's exercise of such power is *Quon Quon Poy* v. *Johnson*, 273 U.S. 352, a habeas corpus proceeding where the petitioner was remanded to the

custody of the Commissioner of Immigration after the latter's death, *nunc pro tunc* as the day on which the case was argued and submitted. See also *Harris* v. *Commissioner*, 340 U.S. 106, 112-113.

Judgment *nunc pro tunc* is particularly appropriate where delay has resulted from acts of the court. In *Mitchell* v. *Overman*, 103 U.S. 62, 64-65 (1880), this Court stated:

> "The adjudged cases are very numerous in which have been considered the circumstances under which courts may properly enter a judgment or a decree as of a date anterior to that on which it was in fact rendered. It is unnecessary to present an analysis of them, some of which are cited in a note to this opinion. We content ourselves with saying that the rule established by the general concurrence of the American and English courts is, that where the delay in rendering a judgment or a decree arises from the act of the court, that is, where the delay has been caused either for its convenience, or by the multiplicity of press of business, either the intricacy of the questions involved, or of any other cause not attributable to the laches of the parties, the judgment or the decree may be entered retrospectively, as of a time when it should or might have been entered upon. In such cases, upon the maxim actus curiae neminem gravabit,—which has been well said to be founded in right and good sense, and to afford a safe and certain guide for the administration of justice,—it is the duty of the court to see that the parties shall not suffer by the delay. A *nunc pro tunc* order should be granted or refused, as justice may require in view of the circumstances of the particular case."

In the present case, if the U. S. District Court had appointed counsel for Parker as he requested (R. 15, 44, 53), it is inconceivable that it would have taken him more than three years to reach this Court. Moreover, if Parker had had counsel or had even been financially able to proceed in this Court without the time-consuming impediments of *in forma pauperis* procedures, his petition for certiorari filed on October 24, 1958, might well have been granted in time for the Court to hear argument and decide the merits before his release from custody last June.

In any event, as was stated above, this case comes so clearly within the doctrine enunciated last February in *Cash* v. *Culver*, 358 U.S. 633, that this Court could have summarily reversed the lower court's decision without argument. Perhaps it would have done so if it had been aware of the imminence of petitioner's release from custody. This case was ripe for judgment when certiorari was granted. Issuance of a writ of habeas corpus as of that date would have been—and is now—entirely appropriate.

This Court has long recognized that "convictions may entail collateral legal disadvantages in the future." *Pollard* v. *United States*, 352 U.S. 354, 358. On that basis the Court has ruled on the merits of petitions collaterally attacking the validity of federal sentences under 28 U.S.C. §2255 after the petitioner's release, even though that statute, like 28 U.S.C. §2241, applies to "a prisoner in custody." See *Pollard* v. *United States* and the cases there cited.

The same considerations are applicable, and the same result should be reached, in cases involving collateral attacks on state court sentences by habeas corpus. Indeed, the Court of Appeals for the Ninth Circuit, relying on the *Pollard* opinion, has already reached such a result. In *Dickson* v. *Castle*, 244 F. 2d 665 (1957), although upholding

the denial of habeas corpus on other grounds, that court ruled:

> "Subsequent to the submission of this appeal to this court it appears that appellee was unconditionally released from the custody of appellant by order of the California Adult Authority.
>
> "The initial question presented, therefore, is whether this appeal is moot. We hold that under the rule announced by the Supreme Court in *Pollard* v. *United States*, 1957, 352 U.S. 354, 358, 77 S.Ct. 481, 1 L.Ed. 2d 393, it is not, and we therefore proceed to consider the issues presented by this appeal."

Moreover, in *Heflin* v. *United States*, 358 U.S. 415, 420, a majority of this Court, speaking through Mr. Justice Stewart, equated the custody requirement under §2255 with that under §2241 in refusing to grant relief under §2255 from an illegal sentence when the prisoner was validly in custody under another charge. This equation should be similarly applied to grant to Parker the review on the merits which Pollard received.

This is not a case where, as in *Heflin* or in *McNally* v. *Hill*, 293 U.S. 131, the prisoner was legally in custody under another charge when his petition was filed. When Parker filed his petition he was in custody pursuant to a conviction which he claims was in violation of his rights under the Fourteenth Amendment to the United States Constitution. He remained in such custody until June 6, 1959. Issuance of the writ as of a date when petitioner was unlawfully in custody should meet fully the test laid down in the *McNally* and *Heflin* cases, as well as the statutory requirements of 28 U.S.C. §2241.

Since the power of any court to render judgment *nunc pro tunc* is discretionary, this Court need not fear that

any flood of prolonged or increased litigation would result from granting such relief in this case. By issuing the writ as of the day when certiorari was granted and Parker was still in custody, no other persons would be adversely affected and Parker's record would be cleared. By refusing to do so, this Court will be leaving in effect the erroneous opinion of the Court of Appeals for the Fifth Circuit and the federal stamp of approval which it places upon Parker's conviction, thereby invalidating all of Parker's years of efforts to clear his name of this charge.

Unless they are reversed, it seems inevitable that these erroneous decisions by the lower federal courts will continue to have adverse consequences for Parker. For instance, Article 3, Section 51-C of the Texas Constitution, as amended November 16, 1956 provides:

> "The Legislature may grant aid and compensation to any person who has heretofore paid a fine or served a sentence in prison, under the laws of this State for an offense for which he or she is not guilty, under such regulations and limitations as the Legislature may deem expedient."

Special acts have been enacted pursuant to such authorization; *e.g.*, Texas Laws 1957, Pages 1522, 1554 and 1621. Petitioner's chances to obtain such relief, or to obtain a pardon from the Governor restoring his civil rights in Texas, are obliterated by the opinions of the lower federal courts. On the other hand, a reversal by this Court would place petitioner in an excellent position to seek such relief.

More complex is the question of how this conviction affects Parker's voting rights. His record as provided by the State Department of Public Safety (R. 33) shows that Parker had previously been convicted of felonies in other states, but not in Texas. However, such record does

not purport to show whether or not he has been pardoned for such offenses. Article 5.01 of the Texas Election Code does not expressly refer to out-of-state convictions, simply disqualifying from voting "all persons convicted of any felony except those restored to full citizenship and right of suffrage or pardoned . . . " This is in contrast to the provision of other statutes such as Sec. 78 of the Texas Probate Code, which expressly provides that "no person is qualified to serve as an executor or administrator who is * * * (c) a convicted felon, under the laws either of the United States or of any state or territory of the United States, or of the District of Columbia . . . " Thus it can be argued that when the Texas Legislature intends to attach consequences of personal disqualification or disability to a felony conviction under the laws of some other state, the statute will contain an express provision to that effect. Moreover, the Texas Constitution vests the power to prescribe qualifications of voters squarely in the Texas Legislature, and such power cannot be delegated.

There is one case which has recently come to the attention of counsel for petitioner in which the Court of Civil Appeals for Amarillo, without citing any authority or discussing the above arguments, held in an election contest that a voter's prior conviction of a felony in another state invalidated his vote. *Harwell* v. *Morris*, 143 S.W. 2d 809. However, the Supreme Court of Texas did not review this case. There can be no assurance as to whether it would adhere to the *Harwell* decision or follow the doctrine of *Logan* v. *United States*, 144 U.S. 263, that in the absence of express statutory provisions to the contrary a conviction and sentence in another state has "no effect, by way of penalty, or personal disability or disqualification, beyond the limits of the state in which the judgment is rendered."

In addition to the effect on Parker's rights, there is another significant factor which should lead this Court to exer-

cise its discretion in favor of ruling on the merits. In its capacity as supervisor of the federal court system, this Court should not allow the erroneous opinion of the Court of Appeals for the Fifth Circuit to remain in force as a precedent for future litigation. Issuing the writ *nunc pro tunc* will give the Court an opportunity to correct such opinion, and to admonish both federal and state courts as to the rule which should be applied in cases such as this. The salutary effect of such pronouncements is evidenced by the reliance which the Texas Court of Criminal Appeals placed upon the *Cash* v. *Culver* opinion in the *Moore* case.

That the desirability of creating a precedent will justify issuing a writ *nunc pro tunc* is evidenced by the decision in *United States* v. *Paddock*, 68 F. Supp. 407 (W.D. Mo., 1946). There the court issued a writ of injunction, *nunc pro tunc*, against a deceased defendant accused of misbranding drugs in violation of the Federal Food and Drug Act. Although issuance of the injunction could hardly be expected to affect the future conduct of the deceased, it did create a precedent which may well have assisted in future enforcement of the Act. It should be much more important to correct an erroneous precedent in the form of an opinion by a United States Court of Appeals.

CONCLUSION

The refusal of the U. S. District Court and the Court of Appeals to grant the writ of habeas corpus sought by George Lee Parker is in direct contravention of the rule applied by this Court in the line of cases running from *Betts* v. *Brady* through *Cash* v. *Culver*. The errors discussed above and the complexity of the legal problems confronting Parker at the trial show clearly that without a lawyer he could not possibly have had the adequate and fair defense to which he was entitled under the Fourteenth Amendment. *Palmer* v. *Ashe*, 342 U.S. 134.